85-671

Supreme Court, U.S.
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No. .....

In The
Supreme Court of the United States
October Term, 1985

FRED M. PRUESSNER AND DONNA PRUESSNER, REV. A. C. WEGNER, JR., MARTIN MILLER AND EMILY MILLER, DALLAS MICHELSON AND JEAN MICHELSON, ROBERT J. CROOKS AND SUE CROOKS, AND GAIL VOSBURGH,

Petitioners,

vs.

DR. ROBERT BENTON, SUPERINTENDENT OF PUBLIC INSTRUCTION AND STATE BOARD OF PUBLIC INSTRUCTION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI to the SUPREME COURT OF THE STATE OF IOWA

GIBBS & CRAZE CO., L.P.A.

By: David C. Gibbs, Jr.
Charles E. Craze
6929 West 130th Street, #600
Cleveland, Ohio 44130
(216) 845-6800

Craig Hastings
CLARK, CLARK & HASTINGS
315 Sixth Street
Ames, Iowa 50010
(515) 232-2501

Attorneys for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

1330

QUESTIONS PRESENTED

Respondents construed Iowa Code section 299.24, Religious Groups Exempted From School Standards, as being available only to religious groups, such as the Amish, who live isolated from mainstream American life, and not to Petitioners. The questions presented are:

1) Whether such a construction, as applied to Petitioners, is an arbitrary violation of the standards established by section 299.24?

2) Whether such a construction, as applied to Petioners, is an arbitrary violation of the standards of the religion and equal protection clauses of first and fourteenth amendments to the United States Constitution which prohibit a state-drawn classification based on religion without a compelling reason therefore.

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Petitioners,

vs.

DR. ROBERT BENTON, SUPERINTENDENT OF PUBLIC INSTRUCTION AND STATE BOARD OF PUBLIC INSTRUCTION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI to the SUPREME COURT OF THE STATE OF IOWA

The petitioners, Fred M. Pruessner, Donna Pruessner, Rev. A. C. Wegner, Jr., Martin Miller, Emily Miller, Dallas Michelson, Jean Michelson, Robert J. Crooks, Sue Crooks and Gail Vosburgh, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Iowa made in this proceeding on May 22, 1985.

OPINION BELOW

The opinion of the Supreme Court of the State of Iowa is reported at 368 N.W.2d 74 (Iowa 1985), and is printed in Appendix A, at App. 1, *infra*. The March 16, 1983, Findings of Fact, Conclusions of Law, Order, Judgment and Decree of the Iowa District Court for Floyd County is unreported, but may be found in Appendix B, at App. 31, *infra*.

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JURISDICTION

The judgment of the Iowa Supreme Court was entered on May 22, 1985. A timely petition for rehearing was denied on July 26, 1985, and this petition for certiorari was filed within 90 days of that date. This court's jurisdiction is invoked under 28 U.S.C. § 1257(3) in that the validity of a state statute is drawn into question as being in its application, repugnant to the Fourteenth Amendment to the United States Constitution.

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STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. XIV 1:

. . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any state deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.

Iowa Code: § 299.1

299.1 *Attendance requirement.* Any person having control of any child over seven and under sixteen years of age, in proper physical and mental condition to attend school, shall cause said child to attend some public school for at least twenty-four consecutive school weeks in each school year, commencing with the first week of school after the first day of September, unless the board of school directors shall determine upon a later date, which date shall not be later than the first Monday in December.

The board may, by resolution, require attendance for the entire time when the schools are in session in any school year.

In lieu of such attendance such child may attend upon equivalent instruction by a certified teacher elsewhere.

Iowa Code § 299.24

Religious groups exempted from school standards. When members of representatives of a local congregation of a recognized church or religious denomination established for ten years or more within the state of Iowa prior to July 1, 1967, which professes principles or tenets that differ substantially from the objectives, goals, and philosophy of education embodied in standards set forth in section 257.25 and rules adopted in implementation thereof, file with the state superintendent of public instruction proof of the existence of such conflicting tenets or principles, together with a list of the names, ages, and post office addresses of all persons of compulsory school age

desiring to be exempted from the compulsory education law and the educational standards law, whose parents or guardians are members of the congregation or religious denomination, the state superintendent, subject to the approval of the state board of public instruction, may exempt the members of the congregation or religious denomination from compliance with any or all requirements of the compulsory education law and the educational standards law for two school years. When the exemption has once been granted, renewal of such exemptions for each succeeding school year may be conditioned by the state superintendent, with the approval of the board, upon proof of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, and an understanding of United States history, history of Iowa, and the principles of American government, by persons of compulsory school age exempted in the preceding year, which shall be determined on the basis of tests or other means of evaluation selected by the state superintendent with the approval of the board. The testing or evaluation, if required, shall be accomplished prior to submission of the request for renewal of the exemption. Renewal requests shall be filed with the state superintendent on or before April 15 of the school year preceding the school year which the applicants desire exemption.

§ 257.25 *Educational standards.* In addition to the responsibilities of the state board of public instruction and the state superintendent of public instruction under other provisions of the Code, the state board of public instruction shall, except as otherwise provided in this section, establish standards for approving all public and nonpublic schools in Iowa offering instruction at any or all levels

from the prekindergarten level through grade twelve. A nonpublic school which offers only a prekindergarten program may, but shall not be required to, seek and obtain approval under this chapter. A list of approved schools shall be maintained by the department of public instruction. The state board shall promulgate rules to require that a multicultural, nonsexist approach is used by school districts. The educational program shall be taught from a multicultural, nonsexist approach. The approval standards established by the state board shall delineate and be based upon the educational program described below.

1. If a school offers a prekindergarten program, the program shall be designed to help children to work and play with others, to express themselves, to learn to use and manage their bodies, and to extend their interests and understanding of the world about them. The prekindergarten program shall relate the role of the family to the child's developing sense of self and his perception of others. Planning and carrying out prekindergarten activities designed to encourage cooperative efforts between home and school shall focus on community resources. A prekindergarten teacher employed by a school corporation or county or joint county school system, or its successor agency, and receiving a salary from state and local funds shall hold a certificate certifying that the holder is qualified to teach in prekindergarten.

2. If a school offers a kindergarten program, the program shall include experiences designed to develop healthy emotional and social habits and growth in the language arts and communications skills, as well as a capacity for the completion of individual tasks, and protection and development of physical being. A kindergarten teacher

shall hold a certificate certifying that the holder is qualified to teach in kindergarten.

3. The following areas shall be taught in the grades one through six: English language arts, including reading, handwriting, spelling, oral and written English, and literature; social studies, including geography, history of the United States and Iowa, cultures of other peoples and nations, and American citizenship, including the study of national, state and local government in the United States; mathematics; science, including environmental awareness and conservation of natural resources; health and physical education, including the effects of alcohol, tobacco, drugs and poisons on the human body; the characteristics of communicable diseases; traffic safety, including pedestrian and bicycle safety procedures; music and art.

4. The following shall be taught in grades seven and eight as a minimum program: Science, including environmental awareness nad conservation of natural resources; mathematics; social studies; cultures of other peoples and nations, and American citizenship; English-language arts which shall include reading, spelling, grammar, oral and written composition, and may include other communication subjects; health and physical education, including the effects of alcohol, tobacco, drugs and poisons on the human body, the characteristics of communicable diseases, including venereal diseases and current crucial health issues, music and art.

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STATEMENT OF THE CASE

The cause of action for which petitioners seek review is an appeal from administrative action by the Iowa Board of Public Instruction. The petitioners are parents of compulsory school-aged children who are members of Calvary Baptist Church, Charles City, Iowa, and whose children attended the church school operated as a part of the Church. Some of the petitioners are parents who are not members of the church, but whose children attend the church school pursuant to the religious beliefs of the petitioners.

The petitioners made application, pursuant to Section 299.24 of the 1981 Code of Iowa, to the Iowa Superintendent of Public Instruction, for exemption from the requirements of the compulsory education and the educational standards law, Chapte 299 and 257 of the 1981 Code of Iowa. The applications alleged that the Calvary Baptist Church, of which petitioners were congregational members, hold principles or tenets which differ substantially from the objectives, goals and philosophy of education embodied in standards set forth in Section 257.25 of the Iowa Code and in the Administrative Rules adopted pursuant thereto. The applicants for the exemption were found to be sufficient in number and standing to make the section 299.24 application for exemption. The Church was found to be a recognized church or denomination established in the State of Iowa for more than ten years prior to July 1, 1967.

Attached to each Application was a statement of the "Educational Convictions and Philosophies" of the Calvery Baptist Church. Also comprising a part of the Application of the record before the State Board was Exhibit B,

a booklet entitled, "Minimum Standards for the Amish Parochial Private Elementary Schools of the State of Iowa," and an affidavit by Reverend Randy Johnson, Pastor of Calvary Baptist Church.

Petitioners' Applications were considered by respondent, Dr. Robert Benton, State Superintendent of Public Instruction and by letter dated September 8, 1982, the State Board voted to approve the recommendation of Dr. Benton and to deny the exemptions.

Petitioners sought review of the State Board's denial by means of a Petition for Judicial Review filed with the Floyd County Iowa District Court on September 22, 1982. This review was consolidated with a declaratory action brought by the church and its pastor. It was stipulated that the record on this appeal from the administrative action before the State Board of Public Instruction would be the record before the State Board as certified to the Floyd County District Court.

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HOW FEDERAL QUESTION IS PRESENTED

In their Petition for Judicial Review to the Floyd County District Court, filed September 22, 1982, the petitioners herein alleged that the State Board's denial of their applications for religious exemption "violated their rights under the U.S. and Iowa Constitutions including their right to equal protection of the law."

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REASONS FOR GRANTING THE WRIT

A. Limiting the application of section 299.24 to members of the Amish sect has the effect of establishing a religion and creating a suspect classification of religions.

Iowa Code section 299.24 was enacted by the Iowa legislature when it was placed in the position of a no-win confrontation with Amish parents and faced with the electors' revulsion caused by media pictures of peace officers, chasing frightened children into cornfields. The Attorney General of the State of Iowa during this period of confrontation, Lawrence J. Scalise, has given unusual insight into the conflict during that period in his article, "The Amish In Iowa And Teacher Certification," 31 Albany L. Rev. 1 (1967).

> It involves a conflict between the religious beliefs of the Amish parents and the state, acting as parens patriae, as to the preparation or qualifications of teachers and the proper education of children. This conflict is difficult to resolve because of the Amish parents' position, rooted in a religious repudiation of worldliness, that an eighth grade education is all a teacher needs to teach their children.

Scalise, Amish In Iowa, p.4.

Scalise noted that the "Amish philosophy of education is rooted in religion," the goal of which is to "establish the foundations of a society of useful, God-fearing, and law-abiding citizens." Scalise, p.4, fn.16.

According to Scalise, the controversy arose when two private Amish schools, after having employed state certified teachers for several years, hired "uncertified Amish teachers who possessed only eighth-grade educations,"

(Scalise, p.2) in violation of the compulsory education law which permits "equivalent instruction by a certified teacher" elsewhere than in public school. Iowa code section 299.1. After some three years of controversy, the Governor of Iowa announced "that a moratorium had been agreed to between the parties for a 'cooling off period' in the controversy during which a further patient effort could be made to find a common ground of understanding." Scalise, p.2. The Agreement which resulted from the cooling off period basically agreed that the Amish children would be taught by certified teachers who were to be paid by private funds and

> [s]tandard public school requirements relating to attendance and *curriculum* will be met except that certain adjustments will be made to avoid conflict with Amish religious beliefs. These adjustments will include the right of the Amish to provide for instruction in the German language in the schools for at least two hours a week. *There will be no religious instructions in the schools.*

Scalise, pp.2-3 (Emphasis added.) That agreement was to be operative until the Iowa General Assembly met in 1967, at which time it would "be asked to provide a statutory solution." Scalise, p.3.

The solution provided by the General Assembly was section 299.24. The exemption provided for by this section was not on its face limited to a named religious denomination or sect, nor was it made available only to those engaged in a particular lifestyle. To the contrary, the statute broadly provides for an exemption when members of a local congregation of a recognized church or religious denomination files with the state board of public instruction: 1) proof that the church "professes principles or

tenets which differ substantially from the objectives, goals and philosophy of education embodied in the Iowa educational standards," and 2) a list of those children who desire to be exempt and whose parents are members of the church or denomination. When the proof and the list have been filed, the exemption may be granted for two years as to any or all of the compulsory education law and educational standards law. Renewal of the exemption is based on proof of achievement in the basic skills of arithmetic, the communicative arts, United States and Iowa history and American government.

It is clear that the impetus behind section 299.24 was the controversy between the Amish and state school laws. The issued raised by this Petition are two-fold. First, Petitioners contend that limiting that section to the Amish acts as a constitutionally suspect classification arbitrarily based on religious tenets with no compelling reason therefore. Second, by its classification, the State of Iowa has, in effect, established the Amish over any other denomination in that state. Both of these activities by Respondents have most recently been categorically prohibited by this Court in *Larson v. Valente,* 456 U.S. 228, 102 S.Ct. 1673, 72 L.Ed.2d 33 (1982).

Larson involved an attempt by the Minnesota Legislature to control certain religious groups whose practices included the public solicitation of funds. One such group was the Holy Spirit Association for the Unification of World Christianity (Unification Church) whose members engaged in the public solicitation of funds to be used for religious purposes. When this Court was faced with a state law which selected favorites among religious sects, it treated that state activity as suspect and applied the

equal protection clause's "strict scrutiny in adjudging its constitutionality." *Larson, supra,* at 246. The state activity was unable to withstand the strict scrutiny and was held to be a violation of the Establishment Clause.

The Iowa legislature may have been motivated by the Amish controversy to adopt section 299.24, but Petitioners do not believe it was the intent of the Legislature to engage in the religious favoritism which is the result of respondent's actions. Three members of the Iowa Supreme Court also questioned whether section 299.24 is to be given the majority's very narrow interpretation.

> I believe that the exception provided in section 299.24 is as applicable to the appellants as it is to the Amish. By enacting this section, I believe the legislature not only intended to avoid placing our executive and judicial branch in the unpleasant position of attempting to enforce compulsory education on the Amish, but also attempted to eliminate this problem in relation to other religious groups who maintain unusual principles that clash with the state's philosophy of education.

(Schultz, J., joined by Uhlenhopp, J., dissenting. App. A, at App. 25-26.) J. Carter dissented because he could not

> accept the interpretation employed in the majority opinion with respect to the scope of the religious exemption granted by Iowa Code section 299.24.
>
> * * *
>
> The narrow interpretation which the majority opinion places on section 299.24 would deny the statute any meaningful application.

Carter, J., dissenting. App. A, at App. 29.

The interpretation of respondents, as affirmed by the courts below has the effect of denying the exemption to

all but the Amish. Thus is created a suspect class of other religious denominations, primarily Baptist, and a state religious favorite-Amish. The Petitioners' plight is not isolated. The United States District Court, Southern District of Iowa has just recently perpetuated the Baptist/Amish distinction, despite a finding that

> Independent Baptist Churches, such as the one in which Petitioners have their children enrolled, grew out of the same Anabaptist religious philosophy as the Amish and Menonites [sic]. They consider themselves "in the world but not of the world." They do not accept many of the worldly ways. Their social life, as well as their religious life, is centered in the church.

Fellowship Baptist Church et al. v. Robert T. Benton, et al., Civil No. 81-546-C, slip op. at 21 (S.D. Ia. Sept. 26, 1985).

The intent of the Establishment clause and the Equal Protection Clause was to prevent a state-mandated religion which opposes other religions. This case is important to carry out that intent in the State of Iowa.

B. There is national confusion as to what are the states' interests in education when confronted with personal liberty issues.

Petitioners do not believe it can be questioned that their conflict with the goals, objectives and philosophy of education embodied in the Iowa school standards law is premised upon their religious principles and tenets. The court below recognized that the Petitioners' religious beliefs are just as strongly and sincerely held as those of the Amish which are protected by section 299.24. Indeed, the majority had "no reason to suppose the religious convictions of these plaintiffs are any less sincere than those

of the Amish." App. A. at App. 24. Nevertheless, the respondents imposed upon the Petitioners a requirement that they not only have religious principles and tenets in conflict with the Iowa school laws, but also that they live isolated lives. Otherwise, says the State of Iowa, the state's interest in education is so compelling as to outweigh the Petitioners' personal liberty interests.

The effect of the overbalancing of their religious liberty and equal protection interests in the State of Iowa is to absolutely deny to Petitioners the opportunity to pursue their religious beliefs in a manner identical to that permitted to the Amish in Iowa and to the Amish as well as other religious denominations in the states surrounding Iowa. As is evident in this state, the courts cannot be relied upon to clear up the confusion that exists across the nation as to whether the state interest in education is more compelling in states such as Iowa than it is in states such as Nebraska, which permits those identically situated to Petitioners to freely practice the tenet of their faith which requires them to provide their children with a thoroughly religious education.

One legal scholar has explained the problem faced by both states interested in assuring an educated populace and religious parents who are following what they believe to be a God-mandated command to instruct their children.

> "There is great confusion, even anguish in America today about the relationship between religion and politics." The tension is focused on the question of the right of fundamentalist Christians to operate schools for their children versus the right of the state to ensure that every child receives an adequate education.
>
> One cannot predict whether the judicial system, divided as it has been through the years over the con-

> flicting claims, can resolve the problem. Its resolution to other Church-state conflicts has been less than satisfactory. The United States Supreme Courts' reluctance to hear and decide cases involving the operation of schools has been apparent and contributes to a national confusion.
>
> Thus society is left with its right to demand that lawmakers come to grips with the conflicting elements and attempt, with what sketchy guidance there is, to resolve the dispute, to protect the interests at stake, to traverse the minefield of church-state relations.

Shugrue, *An Approach To Mutual Respect: The Christian Schools Controversy,* 18 Creighton L. Rev. 254 (1985). (footnotes omitted)

Society's attempts to resolve the dispute without guidance from this Court has resulted in inequities. Professor Shugrue expresses the anguish of state officials and appointees left with the task of traversing that minefield. He was appointed by the Governor of Nebraska in 1983 to the Governor's Christian School Issue Panel. The empanelling of the Commission followed years of explosions in Nebraska in the church-state minefield over the very issues raised herein. Several cases raising the issue of interest of the state in educating children versus the interest of religiously motivated education by church schools were fought and lost in Nebraska courts. (*Nebraska v. Bible Baptist Church of Lincoln,* 353 N.W.2d 20 (1984); *Nebraska v. Calvary Academy,* 348 N.W.2d 898 (1984); *Nebraska v. North Platte Baptist Church,* 345 N.W.2d 19 (1984); *Prettyman v. Nebraska,* 537 F.Supp. 712 (D.Ne. 1982); *State ex rel. v. Faith Baptist Church,* 301 N.W.2d 571 (1981), appeal dismissed sub. nom. *Faith Baptist Church v. Douglas,* 454 U.S. 803 (1981)).

Because, like these petitioners, the religious education is commanded of the Nebraska parents and the churches by their faith, they believed it would be a sin to abandon that form of education. Their inability to abandon their faith resulted in even more contempt convictions, with preachers and parents receiving stiff jail sentences and fines. Personal property of churches and pastors was seized by Nebraska sheriffs to pay those fines. Worshippers were picked up and carried out of a religious worship service. Church doors were padlocked. *State ex rel. Kandt v. North Platte Baptist,* 65 N.W.2d 813 (1985); *In re Contempt of Sileven,* 361 N.W.2d 189 (1985); *In re Contempt of Liles,* 344 N.W.2d 626 (1984); *Liles v. Nebraska,* — U.S. —, 104 S.Ct. 1020 (1984); *In re Contempt of Liles,* 349 N.W. 377 (1984); *McCurry v. Tesch,* 738 F.2d 271 (8th Cir. 1984).

The State of Nebraska responded to the heartache of seeing its citizens who were attempting to practice their faith in peace by a governor's commission which advised a compromise which, while perhaps not wholly satisfactory, would meet the interests of both those religious parents who which to inculcate in their children a religious education and the state which wishes to assure itself that the children of these parents are indeed receiving an education. The compromise law is now in effect in Nebraska, permitting an alternative to parents and church schools which believe that the regulations adopted by the State Board of Education violate religious beliefs. Sections 79-201, 79-328, and 79-1701, R.S. Supp., 1984. The alternative is not limited to only the religious who live isolated lives, but to those who believe the school regulations violate their religious beliefs. If Petitioners moved to Iowa, they could practice this tenet of their faith in freedom.

So too could they worship freely in the State of Kansas, which provides for an exemption for children attending "a private, denominational or parochial school taught by a competent instructor for a period of time which is substantially equivalent to the period of time public school is maintained." Kan. Stat. Ann. § 72-111(a)(2). Illinois, (Ill. Rev. Stat. Ch. 26-11), South Dakota (S.D. Codified Laws Ann. § 13-27-3), and Missouri Mo. Ann. Stat. § 167.-031) also each permit children to be taught in a religious school by other than certified teachers.

It is only those religious non-Amish Iowa parents similiarly situated to Petitioners who are being forced to a choice of either abandoning their beliefs and conforming to the majority's standards of education, continuing to practice their faith and face imposition of penal sanctions such as were suffered in Nebraska, or migrating to other, more tolerant regions, such as Nebraska, Kansas, Missouri or South Dakota. The intent of the Bill of Rights was to prevent the imposition of that set of alternatives. *Wisconsin v. Yoder,* 406 U.S. 205, 218-219 (1972) (fn.9).

Petitioners believe that was also the intent behind the enactment of section 299.24. They believe that the Iowa Legislature was longsighted enough to realize that there would be other denominations than Amish seeking the relief offered by section 299.24 and that if it had been intended to be limited to the Amish, the Legislature would have so stated. That intent has been overlooked by respondents. Petitioners think this case is important to further that intent not only on their behalf, but on behalf of others who are willing to undergo the kind of suffering occasioned in Nebraska to those who must obey their God.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinions of the Supreme Court of Iowa.

Respectfully submitted,

GIBBS & CRAZE CO., L.P.A.

By: David C. Gibbs, Jr.
Charles E. Craze
6929 West 130th Street, #600
Cleveland, Ohio 44130
(216) 845-6800

Craig Hastings
CLARK, CLARK & HASTINGS
315 Sixth Street
Ames, Iowa 50010
(515) 232-2501

Attorneys for Petitioners

APPENDIX "A"

368 N.W.2d 74 (1985)
IN THE SUPREME COURT OF IOWA

41

83-493

REV. RANDY JACKSON,
MR. & MRS. RICHARD RUTHERFORD,
MR. & MRS. FRED PRUESSNER,
MR. & MRS. MARTIN MILLER, MRS. MARY DRAKE,
MRS. GAIL VOSBURGH, MRS. HENRIETTA SANTEE,
MR. & MRS. RONALD CALLOW,
MR. & MRS. FRANK MARION,
MR. & MRS. GARY NELSON,
MR. & MRS. MICHAEL HOFFMAN,
MR. & MRS. RICHARD HOFFLER, AND
CALVARY BAPTIST CHURCH

Appellants,

vs.

CHARLES CITY COMMUNITY SCHOOLS BOARD OF EDUCATION, IOWA STATE BOARD OF PUBLIC INSTRUCTION, ROBERT BENTON, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, MARK KLETT, DISTRICT SECRETARY FOR CHARLES CITY COMMUNITY SCHOOLS BOARD OF EDUCATION, RONALD NOAH, FLOYD COUNTY ATTORNEY PHILIP N. NORLAND, WORTH COUNTY ATTORNEY, RICHARD N. TOMPKINS, CERRO GORDO COUNTY ATTORNEY, AND WILLIAM A. HEINTZ, CHICKASAW COUNTY ATTORNEY,

Appellees.

FRED M. PRUESSNER AND DONNA PRUESSNER, REV. A. C. WEGNER, JR., MARTIN MILLER AND EMILY MILLER, DALLAS MICHELSON AND JEAN MICHELSON, ROBERT J. CROOKS AND SUE CROOKS, AND GAIL VOSBURGH,

Appellants,

vs.

DR. ROBERT BENTON, SUPERINTENDENT OF PUBLIC INSTRUCTION AND STATE BOARD OF PUBLIC INSTRUCTION,

Appellees.

(Filed May 22, 1985)

Appeal from the Iowa District Court for Floyd County, Ray E. Clough, Judge.

Two proceedings challenge the enforcement of compulsory school attendance law in controversy surrounding the operation of a private church school. AFFIRMED.

Craig R. Hastings, Ames, and Daniel John Loomis and Charles E. Craze of Gibbs & Craze Co., L.P.A., Cleveland, Ohio, for appellants.

Thomas J. Miller, Attorney General, Merle Wilna Fleming, Assistant Attorney General, Ronald K. Noah, Floyd County Attorney, William A. Heintz, Chickasaw County Attorney, and Judith O'Donohoe, Charles City, for appellees.

Considered en banc.

HARRIS, J.

Plaintiffs are the pastor and certain members of a fundamentalist Baptist church in Charles City. The con-

troversy arose following their organization of a parochial school. The parents were charged with violating Iowa's compulsory attendance law, Iowa Code section 299.1 (1983). The section is quite typical in that it places the sanction for failure to attend on the parent rather than the child. The parents here responded by bringing two separate proceedings. One was a declaratory judgment action which challenged our statutory education requirements, not only the compulsory attendance statute but also certain reporting requirements in chapter 299. The second response was to apply to the state board of public instruction for relief under section 299.24, popularly called the Amish exception. After the administrative application was denied, the plaintiffs filed for judicial review under section 17A.19. The declaratory judgment action and judicial review proceedings were consolidated for trial in district court and for this appeal.

The district court denied declaratory relief and affirmed on the administrative appeal. We agree with plaintiffs' contention that the religious freedoms guaranteed them under the first amendment entitle them to educate their children at the private religious school they have established. The same guarantees accord them the right to operate the school with minimal necessary supervision by the state. A two-fold difficulty with the appeal is that (1) we are not presented with any developed minimal necessary standards, and (2) their absence is not an issue on appeal. The assignments of error address the state's fundamental authority to set any educational standards for private religious schools. Because we reject plaintiffs' assignments of error we affirm the trial court.

Both challenges are rooted in the plaintiffs' deeply held religious beliefs. They perceive their school, which they describe as their "week day educational ministry," to be an integral part of the exercise of their religion. It is named Calvary Baptist Christian Academy.

When it was set up in the fall of 1980 the school was not incorporated separately from the church. The curriculum chosen, the Accelerated Christian Education Program, has not as yet been challenged as inadequate by any state authorities. At the bottom of this litigation is the fact that plaintiffs are unwilling to submit to any state inquiry on the matter. In their view, the educational content and process of their school, because it is so central to their religion, is not properly subject to state oversight. The appellants state their requirements for their program as follows:

> [C]ertain requirements had to be met by the students, their parents, and staff . . . . First of all, the pastor had to be the earthly head of the ministry just as with the bus ministry, Sunday school, or any other ministry of the church. Second, all of the supervisors and assistants had to be members of the church to assure their agreement with the church's doctrinal position and to subject them to the discipline of the church. Third, the atmosphere of the rooms in which the students met had to focus their attention on the Lord Jesus. Fourth, all of the curriculum materials had to be permeated with the biblical convictions held by the church; Calvary Baptist Christian Academy was not planned to be a school teaching secular subjects with a course in bible tacked on. Fifth, all the students were required to take part in all the studies and activities of the curriculum. Sixth, all subjects were presented from a biblical point of view without apology, there was no need or any opportunity for any assistant to present a subject from a so-called "secular" point of view. Finally, the parents of the stu-

> dents were required to agree with the doctrinal position of the church or agree to have their children taught such doctrinal position. The same conditions hold today for Calvary Baptist Christian Academy as they did in 1980. The standards are the same and the curriculum is even more pervasively biblical.

According to the trial court's findings, beginning in the 19th century, there has been growing concern among Christian "fundamentalist" churches with what they consider to be the calamitous threat of secular humanism. The trial court pointed out in its findings:

> The United States Supreme Court [*Engel v. Vitale*, 370 U.S. 6121, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962)] ruling in the year 1962 banning prayer from public classrooms was deemed a "last straw" by many "fundamentalists" and subsequent thereto "fundamentalists" have been vigorous in establishing nonpublic "Christian" schools connected to "fundamentalist" churches scuh as plaintiff church. Another apparent "last straw" has been the teaching of Darwin's theory of evolution as modified from time to time, but not the "fundamentalist's" version of creation as contained in Genesis.

It was to answer this perceived threat that the plaintiffs felt impelled to establish their own school. The trial court's findings continue.

> Calvary Baptist Church began operations of its school or academy in the fall of 1981, within the same structure as Calvary Baptist Church and with children coming only from church members and with no separate school organization, so that Pastor Johnson is the head of the school to the same extent that he is head of the Church. He asserts that the school is a necessary and integral part of the church. He asserts that he and likeminded fundamentalists believe that since God created everything including truth, all learning or education involves education in God's truths and that

education and religion are therefore one and the same and inseparable. He asserts that a person cannot have religion without education and cannot have education without religion.

Pastor Johnson further asserts that he has selected teachers for the church school after prayer and after learning of God's will in the matter, and, therefore, his selection of a teacher is God's selection of a teacher and that a mere state can have no part in either approving or disapproving or controlling or having any influence or licensing or certifying authority as to school teachers of his church school. Similarly, [Pastor] Johnson and others assert that he chose the . . . curriculum for his school after prayer and communion with God, and that his selection of the curriculum is God's will, and that no mere state can approve or disapprove or have any influence of any kind whatsoever or any right or veto or control of God's curriculum.

[Pastor] Johnson and others assert that the church school is a "ministry" or essential religious function of the church and that the state has no more authority to control or regulate the Monday through Friday church school than it has to regulate the Sunday church school.

Plaintiffs also assert that the bible vests in the parents and church the exclusive obligation to educate children, and since the bible grants no educational authority to the state it has none.

[Pastor] Johnson and other plaintiffs similarly assert that any reporting requirements with respect to the church school are tantamount to reporting requirements of essentially religious functions of the church and therefore are constitutionally invalid.

I. Iowa law does not require that all children attend public schools, reflecting a long tradition of friendly co-

existence between private and public schools. *See* Sage: *A History of Iowa,* pp. 102-03 (1974). This accommodation, dating from the first years of our statehood, was reached at least three quarters of a century before the United States Supreme Court ruled that a state cannot compel all students to be educated in public schools. *Pierce v. Society of Sisters,* 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925).

The *Pierce* opinion, however, carefully and expressly excluded from its sweep any limitation or curtailment of

> the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

268 U.S. at 534, 45 S.Ct. at —, 69 L.Ed. at 1077.

The power thus acknowledged in the states to provide out of social necessity for minimum educational standards has enjoyed continuing endorsement in later opinions. *See Wisconsin v. Yoder,* 406 U.S. 205, 213, 92 S.Ct. 1526, —, 32 L.Ed.2d 15, 24 (1972) ("There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education."); *Lemon v. Kurtzman,* 403 U.S. 602, 614, 91 S.Ct. 2105, —, 92 L.Ed.2d 745, 756 (1971) ("[S]tate requirements under school-attendance laws are examples of necessary and permissible contact" between government and religious organizations, illustrating the impossibility of "total separation of

[church and state] in an absolute sense."); *Sherbert v. Verner,* 374 U.S. 398, 403, 83 S.Ct. 1790, —, 10 L.Ed.2d 965, 970 (1963) (free exercise of religion may be subordinate to overriding, compelling state interest in regulation of proper subject).

Plaintiffs' response to these holdings is not altogether consistent, perhaps because they are not entirely agreed among themselves. In their appellate brief they suggest that most of the parents "would be willing to provide certain information regarding their children of compulsory school age provided it would not result in any supervision or inspection of the [school]." They suggest an "accommodation . . . from [Iowa] statutes and regulations in meeting the public's interest through less drastic means such as testing." These stated positions can scarcely be said to square with the position stated by Pastor Johnson in his testimony that the selection of a teacher is made by God and a state can have no influence over the matter, even through certification or licensing. Neither is it in step with his view that school curricula are not subject to state approval, disapproval, or influence because they are set by God alone.

We reject these views out of hand. While the state authority to intrude into private religious schools is, as we shall point out, confined to a necessary minimum, a clear authority, even a duty, does exist.

II. The foregoing authorities also make it clear that first amendment considerations limit the extent to which a state can intrude into the educational affairs of a private religious school. Under *Pierce,* parents are free, notwith-

standing compulsory education statutes, to provide for a private education in a religious forum of their own choosing. This fundamental right would be hollow to the point of nonexistence if the state were to so closely superintend the school as to compromise its religious independence. Plaintiffs' fear of such an unconstitutional intrusion is legitimate. In *State v. Whisner*, 47 Ohio St. 2d 181, 351 N.E.2d 750 (1976) an Ohio scheme for regulating private religious schools was struck down as violative of first amendment rights. The Ohio regulations allocated instructional time to various subjects, limited the school to policies adopted by local boards of education, and committed the private school to cooperating with county school officials. Such a scheme was properly held to infringe upon the first amendment rights of the private school patrons. One ground for the holding is persuasive:

> In our view, these standards are so pervasive and all-encompassing that total compliance with each and every standard by a non-public school would effectively eradicate the distinction between public and non-public education, and thereby deprive these appellants of their traditional interest as parents to direct the upbringing and education of their children.

47 Ohio St. 2d at —, 351 N.E.2d at 768.

In their appellate brief and upon oral submission of their appeal the plaintiffs, as mentioned, suggest that their position of absolute and total rejection of any public regulation can and should be accommodated by Iowa's educational scheme. Yet they concede the general right of the public to demand education for all its children. Plaintiffs suggest that the public could satisfy its rightful role while

at the same time protecting plaintiffs' first amendment rights by merely testing the children.

We reject the suggestion because it does not do enough for the children. To merely test the children, as we shall explain in a later division, does not satisfy the state's rightful role. Whatever limitations are imposed on the state's general right and duty to see to the education of its youth, the right extends beyond occassional testing. It plainly extends to such matters as basic parameters for curriculum and teacher qualifications.

Sincere persons such as these plaintiffs are often unpersuaded by legal authorities. Religious views prompt them to think they must answer to some authority higher than the law. Over the centuries our legal system has become relatively tolerant in accommodating even those who reject it, especially those who do so for religious reasons. But a point is reached after which the accommodation must be offered by the dissenting citizen rather than the state. One such point, long established in this country, is to be found in the compulsory education laws.

A principal difficulty in plaintiffs' assertion is that anyone can make it, not only high-minded and sincere people, but also a host of others whose childrens' educations also are at stake.

The state has a clear right to set minimum educational standards for all its children and a corresponding responsibility to see to it that those standards are honored. When such standards are set in place, compliance with them falls within the ambit of the fundamental contact between the citizen and society. It need scarcely be said that each of us, in order to enjoy membership in an organized social

order, is pledged to adhere to a number of minimum norms. Of these, one of the most central is society's duty to educate its children.

The nature and extent of education remain largely a matter of personal choice. But there are basic minimums and, this being true, it is up to the people as a whole to set them. One way they have done this is to enact compulsory education statutes. A citizen must submit to them, persuade society to change them, or join a society without them.

III. The necessary minimum standards which a state can impose on a private religious school fall under the ambit of a provision in the compulsory education statute. Section 299.1, after imposing school attendance on children over seven and under sixteen years of age, provides an alternative:

> In lieu of such attendance, such child may attend upon equivalent instruction by a certified teacher elsewhere.

The state board of public instruction certifies teachers by authority given in Iowa Code section 257.10 (11) (1983). *See State v. Moorhead,* 308 N.W.2d 60, 64 (Iowa 1984). But no other statute defines "equivalent instruction." In *Moorhead,* we said the term means "instruction which is equal in kind and amount to that provided in public schools." *Id.* We however did not suggest that private religious schools can be made to submit to the sort of state regulation condemned in *Whisner.*

For reasons of their own the plaintiffs did not appeal on grounds of vagueness. This issue was litigated and de-

cided by the trial court but it was not made an issue on appeal.[1] We mention this because of the unusual and unsatisfactory posture of certain crucial aspects of this controversy. Before the school can be required to submit to reasonable minimum regulations it is obvious the state is bound to place private schools on notice of the nature and extent of the necessary minimum standards. Our holding in *Moorhead* is not authority to the contrary. Moorhead sought to educate his children by himself, without the aid of any school. No first amendment rights were claimed. Our *Moorhead* decision is not in point for persons who seek to operate a regilious school for their own and other people's children.

When the state fails to adequately set necessary minimum standards for private religious schools, the patrons are presented with a ready defense to truancy charges. *State ex rel. Nagle v. Olin,* 18 O.O.3d 503, 511, 64 Ohio St. 2d 341, —, (Ohio 1980) ("[U]ntil such time as the State Board of Education adopts minimum standards which go no further than necessary to assure the state's legitimate interests in the education of children in private elementary schools, the balance is weighted, *ab initio,* in favor of a First Amendment claim to religious freedom."); *State v. La Barge,* 357 A.2d 121, 125 (Vt. 1976) (There is a special duty given the state department of education to define equivalent education under its regulatory authority, failing which, a prosecution should be dismissed.)

The trial court attempted with considerable effort and skill to supply standards by sorting through various

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[1]It seems probable that plaintiffs were in no mood to assign the absence of standards as error and at the same time insist the state had no right to set them.

school related statutes and ferreting out minimum statutory requirements. The state, which did not cross-appeal, is not altogether satisfied with the standards thus set and now invites us to refine and expand the trial court's efforts. We decline.

A court is without either the resources or expertise necessary to draft such a regulation. *See Wisconsin v. Yoder*, 406 U.S. at 235, 92 S.Ct. at —, 32 L.Ed.2d at 36. ("Courts are not school boards or legislatures, and are ill-equipped to determine the "necessity" of discrete aspects of a State's program of compulsory education."); *State ex rel. Nagle v. Olin*, 18 O.O.3d at 510, 64 Ohio St. 2d at —, ("the courtroom is simply not the best arena for the debate of issues of educational policy and measurement of educational quality.") (quoting *State v. Shaver*, 294 N.W.2d 883, 900 (N.D. 1980)).

When the parents are presented with a proper outline for the necessary minimum standards they can challenge them as an unconstitutional intrusion under the analyses explained in *Wisconsin v. Yoder*, 406 U.S. at 234-36, 92 S.Ct. at —, 32 L.Ed.2d at 36-37. Of course the burden would be upon the challenger to show the scheme is unconstitutional. *Moorhead*, 308 N.W.2d at 64.

It is enough here to reject the challenge plaintiffs do raise. We reject it because the state can reasonably regulate the basic educational requirements of all children within its borders. The state can inquire into private educational institutions in order to see this is done.

IV. One difference between Iowa's two statutory exemptions from compulsory attendance at public schools is notable. The legislature was specific in limiting the "equi-

valent instruction" allowable under section 299.1 to that furnished by "certified teachers." No such similar limitation was included within the Amish exemption under section 299.24. In seeking to qualify their school for the equivalent instruction exemption under section 299.1 the plaintiffs level a special challenge to the requirement for certified teachers. They keenly feel that this requirement is an oppressive intrusion into their right to provide their children with a religious type education, again claiming a first amendment violation because of their views that education is so intimately intertwined with religion.

Without doubt the selection of a teacher, crucially important for any school, is a matter of even more concern for a religious school. Persons who make the sacrifices required for maintaining a private religious school would be robbed of much of the benefit if unwanted instructors were to be forced upon them. The whole purpose of such a school is to foster the development of their children's minds in a religious enviroment. If the state were to unnecessarily control teacher selection a free exercise right would be threatened.

On the other hand the state's counterbalancing right and duty to the same children must again be considered. The parents have the clear right to select for them teachers with religious convictions which are consistent with the purpose of the school. But it is quite another thing to argue that those same teachers can be devoid of the qualifications of an educator.

We agree with the views expressed in *State ex rel. Douglas v. Faith Baptist Church, et al.*, 301 N.W.2d 571 (Neb. 1981). The Nebraska Supreme Court concluded that

a licensing requirement for teachers in private religious schools:

> is neither arbitrary nor unreasonable; . . . it is a reliable indicator of the probability of success in [a] particular field. We believe it goes without saying that the State has a compelling interest in the quality and ability of those who are to teach its young people.

301 N.W.2d at 579. (Citing *Yoder* and its own decision in *Meyerkorth v. State*, 173 Neb. 889, 115 N.W.2d 585 (1962)).

The Nebraska court went on to reject a suggestion made here: that it would somehow satisfy state interests to inquire into the children's academic progress by testing:

> Defendants insist that this can be accomplished by annual comparative tests. The problem with testing is that it sometimes comes too late. If the deficiency of the education being afforded is not discovered until the end of the year, the child has wasted that year.

Id. at 579. We agree that meer testing would be wholly inadequate to protect the state's rightful interests. A test looks only backward. It can, to a limited extent, measure whether a child has been receiving an education. The state is entitled to the assurance that the child is receiving an education.

V. It remains for us to consider plaintiffs' appeal from the district court decision on judicial review. Consolidated with the declaratory judgment action was plaintiffs' appeal under section 17A.19 from the determination of the state board of education in the separate administrative proceeding. This was the proceeding in which plaintiffs sought a determination that their school should escape state control under section 299.24, the Amish exception.

This provision was noted in *Wisconsin v. Yoder,* 406 U.S. at 208, 92 S.Ct. at —, 32 L.Ed.2d at 21 n.3, as Iowa's resolution of the conflict between compulsory education and the uniquely isolated Amish culture in our midst. Under section 299.24 certain religious societies can apply to the state superintendent for an exemption from the compulsory attendance laws. Upon being satisfied the requirements of the statute are met the superintendent, subject to the approval of the state board of public instruction, may, but is not required to, grant the exemption.

The district court quoted the material parts of section 299.24 as follows:

> When members or representatives of a local congregation of a reorganized church . . . established for ten years or more within the State of Iowa prior to July 1, 1967, which professes principles or tenets that differ substantially from the objectives, goals, and philosophy of education embodied in the standards set forth in section 257.25, and rules adopted in implementation thereof, file with the state superintendent of public instruction proof of the existence of such conflicting tenets or principles, together with a list of the names . . . of all persons of compulsory school age desiring to be exempted from the compulsory education law and the educational standards law, whose parents . . . are members of the congregation . . . the state superintendent, subject to the approval of the state board of education, may exempt the members of the congregation . . . from compliance of any or all requirements of the compulsory education law and the educational standards law for two school years. When the exemption has once been granted, renewal of such exemptions for each succeeding year may be conditioned by the state superintendent, with the approval of the board, upon proof of achievement in the basic skills . . . by persons of compulsory school age exempted in the

> preceding year, which will be determined on the basis of tests or other means of evaluation selected by the state superintendent with the approval of the board . . . .

The board of education denied the application in the belief there was no essential conflict between plaintiffs' legitimate educational goals and those specified in section 257.25. Section 257.25 specifies in considerable detail the educational standards for public schools in Iowa. The district court held there was nothing unreasonable, arbitrary, or capricious in the denial. It also held the denial did not render section 299.24 unconstitutional as applied to the plaintiffs.[2]

Plaintiffs' administrative appeal challenges both of these determinations. Plaintiffs contend they fall within the ambit of the statute's language and hence qualify for the exemption. They also contend it is unconstitutional to deny them the exemption. Our scope of review differs for the two contentions.

We defer for a moment the constitutional ground of the plaintiffs' administrative challenge and first consider their direct assertion that the superintendent's rejection of their application for a statutory exemption was arbitrary and not in accordance with the plain meaning of section 299.24. Ground rules for this part of our review are well-settled. To state baseline principles for our review of administrative matters we often quote *Davenport Water*

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[2]Except for one such standard the district court upheld the denial. One of the standards in section 257.25 calls for rules to require "a multicultural non-sexist approach" for the teaching of subjects. This standard, as applied to plaintiffs, was struck down as an unconstitutional infringement on plaintiffs' religious beliefs. There is no appeal from this determination.

Co. v. Iowa State Commerce Commission, 190 N.W.2d 583 (Iowa 1971):

> [The commerce] commission is the finder of fact, it being for us to ultimately determine, (1) issues of law, (2) whether, commission acted unreasonably, arbitrarily, capriciously, in violation of applicable constitutional standards, or in excess of statutory authority, and (3) whether its findings are supported by substantial evidence of record. . . . Our limited factual review is as it should be, since commission presumably has at its disposal the facilities and expertise with which to appropriately resolve detailed and complicated fact questions. This means we can intercede only when commission is clearly shown to have acted unconstitutionally, in violation of statutory mandate, or absent substantial support in the record.

Id. at 591-92.

It is this court's responsibility to interpret Iowa statutes but in making that interpretation we give deference to an administrative department's interpretation of the statute is administers. *West Des Moines Education Ass'n v. P.E.R.B.,* 266 N.W.2d 118, 124 (Iowa 1978).

The question here is whether plaintiffs' church "professes principles or tenets that differ substantially from the objectives, goals, and philosophy of education embodied in standards set forth in section 257.25, and rules adopted in implementation thereof . . . ." § 299.24. It is a question the legislature called upon the superintendent to make, not because of his expertise in religion but because of his expertise in education.

In view of the historical background for section 299.24 (the plaintiffs themselves call it the "Amish exception") we do not think the legislature intended the exemption to be available to any and all church groups who seek to pro-

vide for a religiously oriented education. If this had been the legislative goal a much broader statute would have been required, such as the Kansas statute interpreted in *In Interest of Sawyer,* 234 Kan. 436, 672 P.2d 1093 (1983). Kansas statutes annotated section 72-1111(a)(2) exempts from Kansas compulsory school laws all children attending

> a private, denominational or parochial school taught by a competent instructor for a period of time which is substantially equivalent to the period of time public school is maintained in the school district in which the private, denominational or parochial school is located.

It is readily apparent that Iowa's statute is aimed at a much smaller target; plainly, all parochial schools in the state are not intended for the exemption. The statute calls, not for a religious evaluation by the superintendent, but for an anlysis of the educational goals of the group applying for exemptions and a comparison of those goals with those set up for public school children. Because of the conviction that religion is the basis for education, held by these plaintiffs and by all who support parochial education, the superintendent faces a mixed and somewhat complex question.

To obtain an exemption under section 299.24, plaintiffs had to prove their church "professes principles or tenets that differ substantially from the objectives, goals, and philosophy of education embodied in standards set forth in section 257.25, and rules adopted in implementation thereof. . . ." As this provision has been interpreted and applied in this case, the "standards" in section 257.25 consist entirely of the listing in subsections 257.25(3) and (4) of subjects that must be taught in grades one through eight. No relevant implementing rules are involved.

Therefore plaintiffs could establish their right to an exemption only if their church professes principles or tenets that differ substantially from the "objectives, goals, and philosophy of education" embodied in the areas of study listed in subsections (3) and (4) of section 257.25.

Plaintiffs offered no evidence that any principle or tenet of their church is in conflict with teaching the subjects listed in the statute. Rather, they insisted only that their church be able to teach those subjects in its own way with books and teachers of its own exclusive choice. Nothing in section 257.25, as interpreted and applied here, would deny them that opportunity. Thus the state board cannot be said to have acted unreasonably, arbitrarily or capriciously in rejecting their exemption request.

What prevents plaintiffs from having their way is not any objective, goal or philosophy of education embodied in section 257.25, but the requirement in section 299.1 that their church employ only certified teachers. Their church's opposition to that requirement, however, is not made a basis for obtaining an exemption under section 299.24. They must look to section 257.25, not section 299.1, to establish their right to exemption.

We conclude, giving due and required deference to the administrative findings of the superintendent, that the plaintiffs have not established any substantial dissimilarity between their educational goals and those specified for public schools, certainly none which sets them apart from all the many other parochial schools in the state. The administrative decision was not arbitrary or capricious under the standards described in *Churchill Truck Lines, Inc. v. Transportation Regulation Board*, 274 N.W.2d 295, 299-

300 (Iowa 1979). The district court on judicial review was correct in so ruling.

VI. We next consider the first of two constitutional facets of plaintiffs' challenge to the administrative denial of their application for an Amish exemption. They first argue it was a violation of their first amendment rights to deny them the exemption.

Section 299.24 was our legislature's response to precisely the same concerns later involved in *Wisconsin v. Yoder*. The statute, its subject, purpose, meaning, and application are fully explained in the *Yoder* opinion.

The United States Supreme Court employed a balancing test to weigh the acknowledged and valid public interest in imposing reasonable regulations and minimum educational standards against the fundamental right of the Amish to direct the religious upbringing of their children. A number of factors were considered in the weighing:

(1) The sincerity of their commitment to a long established religion;

(2) An intricate and crucial interrelationship between those beliefs and their mode of life;

(3) The vital role their beliefs and life mode play in the survival of Amish culture;

(4) The hazards of enforcing compulsory education laws against them; and

(5) The adequacy, in terms of their peculiar needs, of the informal vocational education provided to their youth past the eighth grade.

The court found that the state failed to show how, on balance, its legitimate interest in assuring educated and

self-reliant citizens justified a requirement that Amish children attend school for two additional years (past eighth grade) in contravention of their religious beliefs. The state moreover failed to prove that exempting the Amish from two additional years of education would seriously curtail the efficient operation of their school laws.

When the same factors are placed in balance on this record the opposite conclusion arrerts itself. Sincerity of belief is the only factor wholly common to both the Amish and these plaintiffs. The beliefs of the plaintiffs are greatly less interwoven with their daily mode of life. The Amish culture is greatly more isolated from mainstream American life. Plaintiffs' children, for all the distinctive religious convictions they will be given, will live, compete for jobs, work, and move about in a diverse and complex society. Their educational needs are plainly not as circumscribed as those of Amish children. Neither does exposure to the more general American culture pose such an immediate threat to plaintiffs' mode of living as is the case with the Amish.

Whatever they may feel about their children's religious needs, the plaintiffs have not established that their children's educational needs are significantly different from those of other children. The superintendent's determination not to grant plaintiffs an Amish exception did not infringe upon their religious rights under the first amendment.

VII. Plantiffs also ground their appeal from the decision on judicial review upon an equal protection claim. In its decision affirming the agency action the district court determined that plaintiffs were "not similarly circum-

stanced'' to the Amish who were granted the statutory exception by section 299.24. We assume, without deciding, that the plaintiffs have standing to assert an equal protection claim. We nevertheless reject it because we think separate classifications for the Amish and these plaintiffs were justified.

An administrative agency's factual determinations are less sacrosanct than usual when the judicial review is of a constitutional question.

> Even though supported by evidence, an administrative determination of certain fundamental facts bearing upon a constitutional or jurisdictional issue is not conclusive upon the courts, and with respect to such a determination the courts have the power and duty to exercise their own independent judgment.

2 Am.Jur.2d *Administrative Law* § 692 pp. 581-82 (1962). The authorities which in general require courts to yield to non-arbitrary administrative determinations uniformly provide an exception for constitutional questions. *Reter v. Davenport R.I. & N.W. Ry. Co.*, 243 Iowa 1112, 1124, 54 N.W.2d 863, 870 (1952); 73A C.J.S. *Public Law and Procedure* § 230, pp. 309-10 (1983). The distinction is unimportant here because material facts are not disputed.

On an equal protection challenge the first question is whether some fundamental right is involved. The answer determines the burden to be borne by the challenger. If no fundamental right is at issue the classification must be sustained unless it is patently arbitrary and bears no rational relationship to a legitimate government interest. *Lunday v. Vogelman*, 213 N.W.2d 904, 907 (Iowa 1973). If a fundamental right is at issue the burden is quite different; the state must present a compelling interest which is

served by the discrimination. *Remmers v. Brewer,* 361 F. Supp. 537, 542 (S.D. Iowa 1973). A classification based on religion is such a fundamental right. *Id.*

We agree the state has met this more strict burden here. Without doubt, and plaintiffs agree, the state has a compelling interest in educating its youth. Education is said to be "perhaps the most important function of state and local government." *Brown v. Board of Education,* 347 U.S. 483, 493, 75 S.Ct. 686, —, 98 L.Ed. 873, 880 (1954).

For reasons we have already explained we think this vital state interest is served by the classification. Education is of transcendent importance to all children. In the case of Amish children it can be compromised in favor of religious practice, though the loss to the children is obviously very great. The compromise can nevertheless be justified in view of the isolated lives the Amish children will live. We have no reason to suppose the religious convictions of these plaintiffs are any less sincere than those of the Amish. But the educational needs of their children must once more be considered in the balance.

The educational needs of the children involved here are, as we have said, much different and much greater than the needs of Amish children. Even at school age there is much greater mixing by these children in general society. Some church members send their children to other schools, a matter which would ostracize children from Amish culture. *Yoder,* 406 U.S. at 209, 92 S.Ct. at —, 32 L.Ed.2d at 21.

The principal difference is to consider the world for which the children here will have to be prepared. They will have to compete with well-educated children, will asso-

ciate with them in a society very different from the simple, rural, and largely isolated one that lies ahead for Amish children. The state was fully justified in the classification. The equal protection challenge is rejected.

We would be remiss if we failed to acknowledge our debt to the distinguished trial court for its careful and exhaustive findings and the scholarship reflected in its decision.

AFFIRMED.

All justices concur except Schultz, J., who dissents, joined by Uhlenhopp, J.; and Carter, J., who separately dissents.

SCHULTZ, J. (dissenting)

Because I believe plaintiffs should have been granted an exemption under section 299.24, I dissent.

This appeal presents difficult constitutional problems involving a confrontation between the rights of the state and the religious freedom guaranteed under the Constitution. After a no-win confrontation with Amish parents and faced with the electors' revulsion caused by media pictures of peace officers chasing frightened children into cornfields, our legislature wisely avoided similar constitutional problems by the enactment of section 299.24. I believe that the exception provided in section 299.24 is as applicable to the appellants as it is to the Amish. By enacting this section, I believe the legislature not only intended to avoid placing our executive and judicial branch in the unpleasant position of attempting to enforce compulsory education on the Amish, but also attempted to eliminate this problem in relation to other religious groups who

maintain unusual principles that clash with the state's philosophy of education. The State Board of Education should have given these appellants an exemption. I would reverse the trial court.

Iowa Code section 299.1 (1979) requires that all children over seven and under sixteen attend public school; it excepts children who attend "upon equivalent instruction by a certified teacher elsewhere." This exception applies to all who choose nonpublic education; it is not aimed at those with religious objections to public education and makes no attempt to accommodate those with religious objections. Most private religious schools fall within this section because they have no objection to providing instruction equivalent to that received in public schools; they simply choose to offer additional religious instruction.

On the other hand, section 299.24 was designed for those whose religious beliefs "differ substantially from the objectives, goals and philosophy of education embodied in standards set forth in section 257.25, and rules adopted in implementation." § 299.24. Nowhere does section 299.24 limit its application to the Amish. True, it arose out of the State's conflict with the Amish, recognizing that the State should accommodate those with strongly held religious beliefs, but it looked forward to potential application to others, stating that "members or representatives *of a local congregation of a recognized church* or religious denomination" could apply for an exemption. § 299.24. Section 299.24 provides an escape hatch to accommodate those with sincere religious beliefs that are substantially at variance with public education under our statute and rules.

The majority finds that plaintiffs do not fall within the section 299.24 exception because they have not shown

"that their children's educational needs are significantly different from those of other children." The statute does not address different educational needs; it is aimed at those with different educational goals. Despite the majority's conclusion to the contrary, I believe plaintiffs have established different educational goals. Thus, I believe the administrative decision was arbitrary and capricious, requiring reversal.

Plaintiffs' ultimate educational goal is the glorification of God. Everything taught in their school must be taught from the perspective of their religious beliefs, emphasizing the role of God and the church in their lives and in every subject taught. The children are taught to make life decisions, not through a reasoning process based on the knowledge obtained through their education, but by resorting directly to God or God's word. Nowhere in section 257.25 do we find reference to a public education goal of teaching facts permeated with religion and teaching children to rely on God or God's word.

If this was the extent of appellants' religious dogma concerning Christian education, I might agree that the decision of the agency was not unreasonable. The majority suggests that our statute is aimed at a much smaller target than all parochial schools in the state. Although I would agree with that suggestion, I cannot agree with the implications contained in the majority opinion that places appellants in the same classification as other church groups who choose to provide a religious-oriented education. I perceive from the record that appellants are substantially different in some respects from our other private religious groups. Other parochial schools attempt to cooperate with public regulation of their schools, seeking

public financial support and busing as long as the State does not interefere with their teaching of religious doctrines. The appellants, on the other hand, as a part of their ministry, insist that the exclusive right to educate belongs to the church and interpet the Bible to command their educational ministry. They share the conviction that there is no dichotomy between secular truth and sacred truth. Their educational ministry places the minister as the principal teacher. Their religious conviction that any relationship between the church and state is repugnant prevents the minister or any of the teachers from being certified by the state. Appellants' belief that teachers should be selected by the minister, in consultation with God, based largely on the doctrinal beliefs they are expected to convey to the students places them in direct opposition to the state's scheme of utilizing certified teachers because those teacher applicants who truly follow the doctrine of this church will refuse to become certified by the state. Although appellants may teach the same subjects in their school that are required in the public schools, they approach them from an entirely different philosophical standpoint and will accept no regulation or suggestion from state agencies. Appellants have established strong and sincere religious beliefs which form the basis for educational goals, objectives and philosophies which substanitally differ from those of public education.

In summary, I conclude that the agency and district court erred in the emphasis placed on the similarity between the curriculum of the church school and the educational standards set forth in section 257.25 along with the rules adopted in implementation. I would hold that the section 299.24 exemption is available to the appellants in

this case because their goals are dissimilar to those of the state. I conclude that it was the intention of the legislature not only to avoid a confrontation, with its accompanying criminal sanctions, for the Amish but also for other types of religious groups whose beliefs cause them to be out of step with the state's scheme of enforced education by certified teachers. For this reason I believe the agency decision and that of the district court are arbitrary, capricious and unreasonable and should be reversed.

Uhlenhopp, J., joins this dissent.

CARTER, J. (dissenting).

I dissent because I cannot accept the interpretation employed in the majority opinion with respect to the scope of the religious exemption granted by Iowa Code section 299.24. The present case involves the interpretation of a statutory religious exemption from compulsory attendance in the public schools the basic tenor of which is much broader than the area of constitutional protection recognized in *Wisconsin v. Yoder*.

The narrow interpretation which the majority opinion places on section 299.24[1] would deny the statute any meaningful application. The determination of whether the principles or tenets professed by an organized religion differ substantially from the "objectives, goals, and philosophy of education" embodied in the required curriculum of the public schools requires much more than a review of what courses are required and for what period of time. The forum passing on the request for exemption, in this case

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[1]In my opinion, the interpretation of the exemption contained in the majority opinion matches that which was applied by the state board in the present case.

the state board of education, must scrutinize the substantive content of the various required courses of study and determine whether such content in any way offends against the principles or tenets of the religious group requesting the exemption. Clearly, the state board of education has not done this in the present case.

The matter of certified teachers is irrelevant to a proper analysis of the right to a religious exemption under section 299.24. There is no requirement that religious organizations claiming an exemption under section 229.24 must first seek equivalent instruction by certified teachers outside the public school system. Nor does the fact that the applicants may have attempted that alternative have any bearing on the elements to be considered in passing on the claim for exemption. The exemption is predicated upon conflict between religious tenets and the compulsory curriculum of the *public* schools. That is the only basis upon which such claims should be decided.

While I agree with the views expressed in the dissenting opinion of Schultz, J. that there is much evidence from which a determination favorable to the religious group can be made, it is for the state board of education to make such determinations and not this court. I would therefore reverse the judgment of the district court and remand the case to the state board of education with directions to reconsider the appellant's claim for religious exemption under those standards which I believe the statute imposes.

APPENDIX "B"

IN THE IOWA DISTRICT COURT FOR
FLOYD COUNTY

REV. RANDY JOHNSON, ET AL,

Plaintiffs,

vs.

Cause No. 22891

CHARLES CITY COMMUNITY
SCHOOLS, BOARD OF
EDUCATION, ET AL,

Defendants.

FRED M. PRUESSNER, ET AL.,

Petitioners,

vs.

Cause No. 23190

FINDINGS OF FACT,
CONCLUSIONS OF
LAW, ORDER,
JUDGMENT AND
DECREE

DR. ROBERT BENTON,
SUPERINTENDENT, ET AL,

Respondents.

On the 26th day of October, 1982, the above two consolidated causes of action came on for trial to the Court. Plaintiffs-Petitioners in both causes appeared by their attorneys Charles E. Craze and Daniel L. Loomis of Gibbs & Craze and by Craig R. Hastings. Defendants Charles Community School District and Mark Klett appeared by Judith O'Donohoe of Erb, O'Donohoe & Frye and Ronald K. Noah, Floyd County Attorney, appeared pro se and Merle Fleming, Assistant Attorney General, appeared on behalf of Respondents Dr. Robert Benton, Superintendent of Public Instruction and State Board of Public Instruction and on behalf of said parties as Defendants.

Trial began on October 26, 1982, and testimony was taken thereafter on Oct. 27, Oct. 28, Oct. 29, Nov. 1, Nov. 2,

Nov. 3, Nov. 8, and Nov. 9, 1982, on which latter date all parties in both causes rested, subject to later specification of relevant portions of depositions of certain witnesses received in evidence and subject to written briefs and arguments, all of which have now been received. The case was deemed submitted to the Court for decision subsequent to filing of written briefs and arguments on March 10, 1983.

The Court now having heard all the evidence including depositions and having considered all exhibits, now on this 16th day of March, 1983, enters the following, to-wit:

GENERAL BACKGROUND

Both causes of action consolidated herein for trial relate generally to a dispute between Calvary Baptist Church of Charles City, Iowa, its pastor and some parents whose children attend the church sponsored school on the one hand, with the State of Iowa, the Charles City Community School District, and some other individuals on the other hand. The controversy relates generally to the applicability and validity of certain Iowa statutes which Plaintiffs assert are invalid under certain Federal and State constitutional provisions. There is no question but that Plaintiff church has a right to conduct a nonpublic school and that Plaintiff parents have a right to send their children thereto. The issues generally are whether the State of Iowa can impose any regulations upon operation of the church-school, and if so, whether the regulations in fact imposed are too burdensome to meet constitutional standards.

This controversy first reached the litigation stage when the Floyd County Attorney in November, 1980, charged parents of a number of children who were enrolled in the

church school with violation of Iowa's Compulsory Education laws. The charges were criminal in nature under Section 299.6 of the Iowa Code, and if convicted, the parents would have been guilty of a misdemeanor.

It was soon apparent that litigation on the criminal charges did not provide a forum readily adaptable to investigation of the various factual, legal, and constitutional problems involved. Accordingly, with agreement of the various parties involved in the preexisting criminal cases, they were dismissed, and the Plaintiffs instituted an action in equity for declaratory judgment. The cause so instituted is entitled Reverened Randy Johnson, et al, Plaintiffs v. Charles City Community Schools, Board of Education, et al, Defendants, Equity No. 22891. In said equity cause the Plaintiffs generally asked the Court to hold certain Iowa statutes and administrative regulations adopted pursuant thereto invalid as being in violation of the Plaintiffs' Federal and State constitutional rights, primarily their right to free exercise of religion.

While the said equitable action was pending, the parents of the same children made application under Section 299.24 of the Iowa Code for exemption from application of those same statutes. The exemption sought is often referred to as the "Amish exemption". When efforts to obtain the administrative exemption under Section 299.24 of the Iowa Code were rejected by the State Board of Public Instruction, appeal was taken by the parents to this Court. The administrative appeal is entitled Fred M. Pruessner, et al, Plaintiffs v. Dr. Robert Benton, Superintendent, et al, Defendants, Cause No. 23190 in the above court.

The preexisting equitable action, Cause No. 22891, and the administrative appeal, Cause No. 23190, were consolidated by this Court for trial herein. The two cases as consolidated contain common constitutional questions which are ruled upon in Division I. The administrative appeal, Cause No. 23190, contains additional constitutional and legal questions which are ruled upon in Division II of this ruling.

At the outset it should be noted that U.S. Constitution, Amendment I, provides in part as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." (Said amendment was made binding upon the states by United State Supreme Court interpretation of the 14th Amendment.)

The Constitution of the State of Iowa, Article I, Section 3, provides in part: "The General Assembly shall make no law respecting establishment of religion, or prohibiting the free exercise thereof; . . ."

It is the foregoing constitutional provisions which Plaintiffs primarily assert are violated by various Iowa statutes hereafter discussed. The Federal and Iowa constitutional provisions are essentially identical in scope, import and purpose and they contain almost identical language. Although the Iowa court is the final interpreter of the Iowa Constitution, since the Iowa and Federal Constitutions are essentially identical, great reliance is placed upon Federal court interpretations in this ruling.

State v. Davis, 304 N.W.2d 432, at 434

Redmond v. Ray, 268 N.W.2d 849, at 852

Various other constitutional provisions are alleged to be violated by the Iowa statutes involved and those ques-

tions will be ruled upon in the appropriate divisions of this ruling.

DIVISION I. ISSUES RE EQUITY NO. 22891

A. FINDINGS OF FACT

The findings of fact herein relate to the issues in equitable Cause No. 22891. Additional findings of fact may be stated in other portions of this ruling. Findings of fact in the administrative appeal are set out in a separate division.

Plaintiff Calvary Baptist Church was first incorporated under laws of the State of Iowa in the year 1944 under the name Covenant Evangelical Mission Church. Its title was amended in 1961 to Independent Mission Church, and in 1970 to Calvary Baptist Church. It is a nonprofit corporation under the laws of the State of Iowa. Plaintiff Reverend Randy Johnson became pastor of said church in November, 1978.

Reverend Randy Johnson was born in Detroit, Michigan, in 1953. At age 5, and again at age 10, he asserts he had a religious or spiritual experience from which he determined to dedicate his life to his religion. He ultimately graduated from public high school in Davenport, Iowa, and enrolled in Faith Baptist Bible College, Ankeny, Iowa, in fall 1971, and he graduated therefrom in the year 1975 with a Bachelor of Science Degree in Christian education. After some intermediate work experience and further courses at Faith Baptist Bible College, he became pastor of Calvary Baptist Church at Charles City, Iowa, in November, 1978.

Pastor Johnson describes Plaintiff church as a "fundmentalist, Bible-believing, evangelical, independent Bap-

tist church." By "fundamentalist" he means that the that the members believe in the "fundamental" teachings of God, and that the Bible is the inspired word of God, and that it is "perfect" since God inspired various human beings to write down the words which He told them to write. He and other church members believe that the Bible is the exact standard of God given to regulate life, government and family and other interrelationships on earth. All parishioners believe in and endeavor to live absolutely by the words of the Bible. By "evangelical" Pastor Johnson means that all people are "sinners" and his church emphasizes salvation by faith in the atoning death of Christ through personal conversion. By "Baptist", Pastor Johnson means that the church generally follows the Baptist Christian religion in general, exemplified by Baptist churches belonging to Baptist hierarchies in the United States.

As a fundamental difference from other Baptists, Calvary Baptist Church is an "independent" church. That is, it has no hierarchy and no organization having any power or authority over it in relation to any local, temporal, or doctrinal matters.

This Court finds, however, that although Plaintiff church is not a member of any Baptist "organization" and has no "hierarchy", it does have doctrinal or intellectual roots which influence and perhaps enunciate the beliefs of its members, including Pastor Johnson.

Historically, the roots of Plaintiff church probably extend back to the Anabaptist sect which arose out of the Reformation in the 16th Century. The Anabaptist were a religious group, originally in Switzerland, that interpreted the Bible as requiring a greater degree of independence

from all government and from all other churches than did many similar religious groups. While the Anabaptists were generally not in the vanguard of advocating separation of church and state or the free exercise of religion as a principle broadly to be followed, still the Anabaptists were vigorous in defending their own independence. The degree to which they insisted on their own independence was from time to time deemed obstreperous and the Anabaptists were not generally warmly received either by other religious groups or by governments of the various countries in which Anabaptists resided.

This Court believes it is fair to say that although other religious groups may have been more violently persecuted from time to time, yet the Anabaptists can readily point to their share of unfortunate confrontations either with other religious groups or with various national or regional governments.

The Anabaptist movement subdivided into various groups and sects, one or more of which emigrated in pre-Revolutionary War times to the English Colonies which became the United States of America. Once again, in Colonial times Anabaptists were known for their fierce independence from regulation by a hierarchy of church or government, and Anabaptists were apparently not warmly received in many localities.

The foregoing general background of the religious group from which Plaintiff church and its members descended may cast some understanding on the present reactions and beliefs of Plaintiffs individually and as a local church.

As above indicated, although there is no hierarchy to which Plaintiff church belongs, it does have intellectual

well-springs in common with other similar independent, fundamentalist, Bible-believing, evangelistic churches. The individual Plaintiffs and similar-minded church congregations in the United States are the intellectual or doctrinal supporters of several different church-related colleges in the United States and, particularly in this geographical area, of Hyles Anderson Bible College, Hammond, Indiana. The same general types of churches are frequent operators of a church grade school and high school designed by its sponsors to inculcate a "Christian living" curriculum, as distinguished from what Plaintiffs denominate as "secular humanism" in public schools. One of the organizations creating and publishing such a curriculum in this general geographic area is Accelerated Christian Education, Fort Wayne, Indiana, which curriculum is generally known as A.C.E.

In general, A.C.E. curriculum is intended to provide an educational system for children of "fundamentalist" Christian parents in substitution for the public school curriculum from kindergarten through high school. In general the A.C.E. course of study for each subject in each different grade or year has a series of twelve booklets, each containing a series of lessons and periodic tests over the material presented. The lessons are designed to be self-taught by the student to himself, with each lesson including complete and detailed instructions in a vocabulary supposedly geared to the learning level of the child. No professional "teacher", as the term is usually used, is deemed either necessary or desirable for the learning experience of children using the A.C.E. curriculum, according to A.C.E. proponents. In fact, A.C.E. proponents assert that professionally trained, or educated teachers are

likely to "get in the way" of the learning experience of students using the A.C.E. curriculum, and professional teachers must "forget" or "unlearn" a substantial part of their professional training to be competent supervisors or monitors of a class of children using the A.C.E. material. The adult present at any given A.C.E. class is known as a "monitor", and such person is basically charged with distributing the A.C.E. material, preventing outside distractions and gathering in the A.C.E. materials when necessary. If a student fails to pass a self-given test over a particular A.C.E. unit by a score of 80 percent or better, the student must repeat the same work and there is no "teacher" present to give any guidance or any educational assistance.

In the A.C.E. curriculum, dissent is discouraged since Plaintiffs interpret the Bible to teach that only the word of God is true and Christians should not listen to or be subjected to things that are not true or not the word of God, and therefore, contrary or opposing views are presented only as such and are not presented as independent matters from which truth or falsity or rightness or wrongness may be judged by the students.

This Court has examined a substantial number of the A.C.E. booklets (Exhibit 10) and the Court finds that the educational material therein is greatly saturated with Biblical, doctrinal or moral examples in tune with the religious viewpoints of Pastor Johnson, like-minded church members, similar independent, fundamentalist Christians, and the intellectual well-springs heretofore generally identified. A witness from A.C.E. asserts it is providing educational materials to 4,300 church-related schools for 360,000 pupils.

In the A.C.E. curriculum, much of the exposition and many of the questions are laced with religious connotations or Biblical reference or moral lessons.

By way of example, Social Studies book number 1048, page 28, in reference to the California Gold Rush states in part, "God wanted America to grow and He wanted Americans to develop the great natural resources He had placed in the land."

Social Studies book number 1428, page 27, in relation to Lewis-Clark expedition, states, "God wanted the people of America to know about the physical wonders He had placed in the Oregon territory. God used the Indians and a missionary family to lead others to the Oregon territory".

In all A.C.E. booklets the creation of the world as set out in Genesis is incorporated in all subjects.

In Mathematics booklet number 1037, page 26, is the following problem: "In chapel we have 6 chairs in a row. There are 2 rows. How many chairs do we have in chapel?" In mathematics book number 1038, page 5, appears the following: "At the church there were 81 people. 44 were men and women. How many children were at church?"

In general, the religious doctrine of "fundamentalists" was barely elastic enough to permit adherents to send their children to public schools in the United States, until rise in the late 19th Century of what they refer to as "secular humanism". The "fundamentalists" assert that because of the rise of "secular humanism", religion and ultimately prayer were prohibited from public school classrooms. The United States Supreme Court ruling in the year 1962 banning prayer from public classrooms was deemed a "last straw" by many "fundamentalists" and subsequent

thereto "fundamentalists" have been vigorous in establishing nonpublic "Christian" schools connected to "fundamentalist" churches such as Plaintiff church. Another apparent "last straw" has been the teaching of Darwin's theory of evolution as modified from time to time, but not the "fundamentalist" version of creation as contained in Genesis.

After Pastor Johnson came to Calvary Baptist Church, Charles City, Iowa, in November, 1978, he began advocating that the church establish a church school as a church "ministry", or essential religious function of the church. Plaintiff Calvary Baptist Church began operations of its school or academy in Fall, 1981, within the same structure as Calvary Baptist Church and with children coming only from church members and with no separate school organization, so that Pastor Johnson is the head of the school to the same extent that he is head of the church. He asserts that the school is a necessary and integral part of the church. He asserts that he and like-minded fundamentalists believe that since God created everything including truth, all learning or education involves education in God's truths and that education and religion are therefore one and the same and inseparable. He asserts that a person cannot have religion without education and cannot have education without religion.

Pastor Johnson further asserts that he has selected teachers for the church school after prayer and after learning of God's will in the matter, and, therefore, his selection of a teacher is God's selection of a teacher, and that a mere State can have no part in either approving or disapproving or controlling or having any influence or licensing or certifying authority as to school teachers of his church

school. Similarly, Rev. Johnson and others assert that he chose the A.C.E. curriculum for his church school after prayer and communion with God, and that his selection of a curriculum is God's will, and that no mere State can approve or disapprove or have any influence of any kind whatsoever or any right of veto or control of God's curriculum.

Rev. Johnson and others assert that the church school is a "ministry" or essential religious function of the church and that the State has no more authority to control or regulate the Monday through Friday church school than it has to regulate or control the Sunday church school.

Plaintiffs also assert that the Bible vests in the parents and church the exclusive obligation to educate children, and since the Bible grants no educational authority to the State it has none.

Rev. Johnson and other Plaintiffs similarly assert that any reporting requirements with respect to the church school are tantamount to reporting requirements of essentially religious functions of the church and therefore are constitutionally invalid.

Plaintiff church school operated in Charles City, Iowa, with approximately 40 pupils in the school year 1981-2 and began again for the school year 1982-83. Despite the opinions asserted by Rev. Johnson and some other Plaintiffs, this Court finds that there are members of Plaintiff church (a) who send all their children to Charles City public schools and none to Plaintiff church school or (b) who send some of their children to Charles City public school and some to Plaintiff-church school or (c) who sent their

children to Plaintiff-church school in Fall, 1981, but to Charles City Public School in Fall, 1982. There are also apparently one or more members of Plaintiff church who sent their children to public school in Fall, 1981, but who sent their children to Plaintiff church school in Fall, 1982.

With respect to A.C.E. educational material, this Court finds that although A.C.E. encourages schools using its curriculum to avoid use of professional teachers, still there is nothing in the material or in the essential nature of the material to prohibit a professional or licensed or certified teacher of the State of Iowa from being present while A.C.E. materials are being used in the classroom. This Court finds that a number of church-related schools in the State of Iowa are using A.C.E. curriculum materials with trained professional teachers, licensed by the State of Iowa, to be present in the classroom. Furthermore, other church groups including Lutherans, other fundamentalist groups and Baptists, have used A.C.E. material while using a professionally trained or licensed teacher to present the material to the children as student and perhaps to perform other teaching functions.

Additionally, this Court finds that although Pastor Johnson asserts religious scruples against hiring as a teacher one who is licensed or certified by the State of Iowa, yet the college from which Pastor Johnson graduated is an Iowa College whose graduates may be licensed or certified in the State of Iowa. The Court finds that Faith Baptist Bible College, Ankeny, Iowa, sought accreditation as an "approved" college for the training of teachers in Iowa on the 12th day of April, 1982, and such approval wsa granted on the 8th day of July, 1982.

B. CLAIMS OF PLAINTIFFS

It is the first position of Plaintiffs that any and all Iowa Statutes controlling or regulating or infringing in any degree whatsoever with their operation of the Baptist Church School are unconstitutional. Pursuant to this position they assert that (1) the Bible vests in the family and church the duty of education of children and that the Bible nowhere vests the State with any authority whatsoever in the educational field and therefore the State has none. Additionally, pursuant to this position the Plaintiffs assert that (2) God through Pastor Johnson has selected a curriculum for their church school and that (3) God through Pastor Johnson has selected "teachers" or "monitors" for their church school and that a mere state therefore has no possible appropriate role to play on the subject. Plaintiffs further assert (4) that the church school is a "ministry" or essential function of their church and therefore thet school is not subject to any State regulation.

Secondly, Plaintiffs assert that even if the State has some role in the educational process, still the particular Iowa Statutes involved are unconstitutional for a variety of reasons. Plaintiffs assert (a) that the particular statutes and administrative regulations are unnecessarily intrusive in the operation of the school system and (b) that Section 299.1 is unconstitutionally vague in requiring "equivalent instruction" and (c) that annual "testing" by the State would be sufficient regulation and (d) that the Iowa statutes breach their constitutional right to privacy, to free association and against self-incrimination.

The Defendants, of course, deny unconstitutionality for any reason and assert the validity of all Iowa statutes and regulations involved.

In dealing with the claims of Plaintiffs, it should first be noted that when Plaintiffs assert constitutionally-based right to nullification or avoidance of state statutes or regulations because of religious beliefs, then a several pronged test of constitutionality of the statutes and regulations is raised. First, in order to justify any regulation of activities deemed religious by the proponents, the Court must determine whether there is a compelling State interest in any regulation. If the State has a "compelling interest" in some regulation, then the Court must determine whether the method of regulation selected by the State is the least intrusive manner in which the interest of the State can be protected and advanced or whether there is some preferable or less intrusive method of satisfying the State's "compelling interest" in the subject matter of the statute or regulation.

It must be emphasized that in order to justify any State regulation at all, the interest of the State in the subject matter must be "compelling". It is not sufficient that the interest of the State be merely casual or transitory or relatively unimportant. The subject matter to be "compelling" must be of wide-spread, general, serious, long-range, and grave and important interest to our society and its system of government in general. (see Sherbert v. Verner, 10 L.Ed.2d 965; Wisconsin v. Yoder, 406 U.S. 205, 32 L.Ed.2d 15, State v. Riddle, 285 S.E.2d 359, at 364).

This Court, in considering these matters, *accepts at face value the testimony by various witnesses for Plaintiffs as to their beliefs, and the Court proceeds on the basis that those beliefs are both sincere and are religious in nature.* (To the contrary see Wiscinsin v. Kasuboski, 275 N.W.2d 101, at 105-6)

In considering the claims of Plaintiffs, an additional distinction is importatn to make. There is a difference in the degree of constitutional protection of religious opinions as distinguished from protection accorded religiously founded actions. It has long been held that religious opinions are wholly exempt from State control or regulation, but that actions may be subject to regulation although grounded on a religious opinion if the actions are in violation of social duties or are subversive of morals or good order as generally envisioned in our society.

Thus, Mormons were prohibited from entering into polygramous marriages although advocated by their religious beliefs. (Reynolds v. U.S., 95 U.S. 145, 25 L.Ed. 244, at 250)

Similarly, Orthodox Jews were not free to violate Pennsylvania's laws requiring merchants to be closed on Sundays. (Braunfeld v. Brown, 366 U.S. 599, 6 L.Ed.2d 563, at 566) The Massachusetts statutes prohibiting child labor could not be violated on religious ground. (Prince v. Massachusetts, 321 U.S. [illegible], 88 L.Ed. 645). Also Gillette v. U.S., 401 U.S. 437, 28 L.Ed.2d 168.

Possession of marijuana, although religiously inspired, is still unlawful. (State v. Olsen, 315 N.W.2d 7)

C. WHETHER THE STATE HAS A COMPELLING INTEREST IN EDUCATION

At the outset it should be apparent that the *Iowa Statutes do impinge or infringe upon Plaintiffs' religious views to some extent.* Chapters 299, 257, 260, and 280 of the Iowa Code do contain some minimum standards relating to to the education of our young citizens. Plaintiffs' views of the impropriety of any State action are above set out.

That being so, the Court's first inquiry must be whether the State has such a "compelling interest" in the subject as to justify some infringement upon Plaintiffs' constitutionally protected religious rights.

It is no longer an unsettled legal question in the United States whether the State (meaning Government in general) has such a compelling interest in the education of the children of this nation as to justify some regulation and control by establishment of minimum requirements. In the year 1923, the United States Supreme Court in the case Meyer v. Nebraska, 262 U.S. 391, 67 L.Ed. 1042 said, "The American people have always regarded education and the acquisition of knowledge as matters of supreme importance, which should be diligently promoted. The Ordinance of 1787 declares: 'Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.'"

More recently in the school desegregation case, Brown v. Board of Education 347 U.S. 483, 98 L.Ed. 873, the United States Supreme Court said, "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awaking the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may

reasonably be expected to succeed in life if he is denied the opportunity of an education."

In the case Wisconsin v. Yoder, the United States Supreme Court exempted Amish children in the State of Wisconsin from compliance with the last two years of that State's compulsory education law, but even so stated, "Pierce . . . of course, recognized that *where nothing more than the general interest of the parent in the nurture and education* of his child is involved, it is beyond dispute that the State acts '*reasonably*' and constitutionally in requiring education to age 16 in some public or private school meeting the standards prescribed by the State . . ."

World events daily impress upon us the truth that our governmental system of representative democracy with constitutional restrictions upon majority action is not a simple system in which to live and be a responsible citizen. It is not a system for the lazy minded or unthinking. It is a system that requires of each citizen the capacity to learn new bits of information or facts, and to be able to recall them when relevant, and to correlate or reason upon them in the process of reaching a sound conclusion.

Under any form of tyranny or dictatorship, the individual citizen has no cause for independent thinking ability, no cause to develop his capacity to learn, to recall, and to reason. In a dictatorship the State makes the decisions.

This Nation and its system of government is still relatively young and the verdict of history on its success may still be out. However, if our free society is to remain free, then the ability of our citizens to gather the facts, to recall them when relevant, and to organize or classify or cor-

relate them to reach sound conclusions for our society is of paramount importance.

Plaintiffs define "education" as the training or preparation of children to be good citizens of Heaven. The somewhat more modest secular goal of education as defined by some of Defendants' witnesses is to prepare the same children to be good citizens of this Nation. The two goals are not necessarily incompatible but it is evident that good citizenship in this Nation must necessarily precede any citizenship in Heaven.

The child is the *raw material* from which is created good citizenship both for this Nation and for the religious aspirations of Plaintiffs or others. *Education is a part of the system of refining the raw material into a finished product.*

It is obvious that "education" comprehends far more than merely the acquisition of secular information in a school. It includes instruction received from date of birth to the first day of kindergarten and all the other times which a child spends with his or her parents. It includes the entire course of training of the child whether moral, religious, vocational, intellectual, or physical.

Because of constrictures of the Federal and State Constitutions, a public school must be neutral in its presentation of religion, philosophy or theology; and private schools, such as Plaintiffs', are not so limited. That is the strength and the advantage of the private school.

However, any school, whether it be public or private, and if private regardless of its sponsor, has a high and important function in our society.

Plaintiffs assert that under the First Amendment to the Federal Constitution and Article I, Section 3 of the Iowa Constitution no State regulation of their church school is constitutionally permissible. Pursuant thereto, Plaintiffs assert that the decision to have a church school and the decision of whim to select as "teachers" or "monitors" and the decision of what curriculum to teach in the school and the decision to make the school a "ministry" of the church all place the church school beyond the scope of any regulation. Plaintiffs similarly assert that certain Biblical passages as interpreted by them place the duty of education of children in parents and the church and not in the State, and Plaintiffs argue that since the Bible grants the State no such authority, it therefore has none.

The arguments of Plaintiffs have been consistently rejected by courts of record, including the Supreme Court of the United States, for many years last passed.

Moreover, were this Court to affirm Plaintiffs' argument that State statutes and regulations are unconstitutional whenever a church group finds (1) Biblical support for an activity and then makes that activity a "ministry" of the church or (2) asserts that its action results from communion with God, then all governmental activities could soon be nibbled away into *church-imposed anarchy.* Testimony herein shows there is a growing tendency of churches to make as "ministries" such diverse activities as providing "welfare" for needy persons, and providing "foster homes" for wayward juveniles, and establishing a "court" or arbitration system for resolution of disputes among citizens. If any church by assertion of Biblical foundation and establishment of an appropriate "ministry" can thereby arrogate and appropriate to itself the exclusive

control *of any governmental* activity which it chooses to perform, then, indeed our society will become fragmented organs of whatever churches first assert or establish either a "belief" or a "ministry" on the subject. Such a result obviously is neither dictated nor desirable under any Federal or State Constitutional provisions or laws or regulations pursuant thereto.

This Court rejects Plaintiffs' first assertion and finds that the State of Iowa does have a "compelling interest" in the education of children of this State which justifies some infringement upon what are deemed the "religious" beliefs of Plaintiffs. U.S. vs. Lee 71 L.Ed.(2d) 127 at 134.

D. CONSTITUTIONALITY OF "REGULATORY" STATUTES REQUIRING EQUIVALENCY, CERTIFICATION AND CURRICULUM

Plaintiffs, secondly, take the position that even if this Court determines that the State has a Constitutionally "compelling interest" in the education of children at a private church school so as to justify some regulation or control, still the particular Iowa Statutes involved herein are unconstitutional as being too obstrusive in the religious activities and beliefs of Plaintiffs. It appears to this Court that there are two categories of statutes subject to such attack by Plaintiffs, namely, (1) statutes regulating or controlling the educational process itself and (2) those statutes requiring the report of some information. It appears to this Court that the primary statutes in the first category which regulate or control the educational process itself are Section 299.1, Section 257.25 and Section 280.9 of the 1981 Code of Iowa. In the second category requiring reports of information are Section 299.3 and Section 299.4.

In considering the Iowa Statutes, this Court notes that they are generally on the same subject and as such are in pari materia and will be so considered herein. See Spilman v. Bd. of Directors, 253 N.W.2d 593, at 596; S.E. Warren v. Dept. of Pub. Inst., 285 N.W.2d, at 178; State v. Witkowski, 256 N.W.2d, at 219.

In this section of this Ruling, the Court will consider only the first category of statutes, those regulating or controlling the educational process.

Section 299.1 of the Iowa Code provides in part, "Any person having control of any child over seven and under sixteen years of age . . . shall cause said child to attend some public school . . .

". . . In lieu of such attendance, such child may attend upon equivalent instruction by a certified teacher elsewhere."

Section 257.25 provides in part, "In addition to the responsibilities of the State Board of Public Instruction and the State Superintendent of Public Instruction under the provisions of the Code, the State Board of Public Instruction shall, except as otherwise provided in this Section, establish standards for approving all public and nonpublic schools in Iowa . . . The educational program shall be taught from a multi-cultural, non-sexist approach. The approval standards established by the State Boards shall delineate and be based upon the educational program described below:

". . . 3. The following areas shall be taught in grades 1 through 6: . . ." (all subjects specified in the statute are included in the A.C.E. curriculum or are otherwise taught in Plaintiff's church school).

"4. The following shall be taught in grades seven and eight as a minimum program:" (all specified subjects are included in A.C.E. curriculum, or otherwise taught in Plaintiffs' church school).

Section 280.9 of the Iowa Code provides in part; "The . . . authorities in charge of each nonpublic school shall incorporate into the educational program the total concept of career education to enable students to become familiar with the values of a work-oriented society . . ."

Other Iowa statutes prescribing the minimum number of days in a school year and requiring instruction to be given in the English language are apparently not challenged separately by Plaintiffs, except under their general challenge to any regulatory statutes.

In considering the above statutes, it appears to this Court that they require a child to appropriate age who is not attending public school to obtain, "equivalent instruction" and such instruction must be by a "certified teacher" and the curriculum must contain the minimum subjects set out in Section 257.25 and Section 280.9, and the curriculum must be taught from a "multi-cultural, nonsexist approach."

Considering the statutes together, it appears to the Court that the essence is that the non-public school *student must receive "equivalent instruction"* and that *to obtain instruction of that caliber, Iowa requires the teacher to be "certified" and the curriculum to be the minimum prescrbide by Section 257.25 plus Section 280.9* and the *curriculum must be presented in a "multi-cultural, nonsexist approach".*

There are some additional Iowa statutes and administrative rules which this Court deems pertinent, although

generally providing for execution or explanation of the foregoing statutes.

This Court finds that Plaintiffs' church school is a "non-public school" under Section 280.2 and is "non-approved" by the Department of Public Instruction. Such approval is neither sought by Plaintiffs nor is it necessary to be sought. However, as a nonpublic nonapproved school, Plaintiffs' church school is subject to other statutes and rules which further refine the "equivalency" requirement of Section 299.1, namely, Sections 257.25(3), (4), and (9); and some provisions of I.A.C. 670.3, 1-7 and 670.6, 1-13.

As a nonpublic school, Plaintiffs' church school is also subject to parts of Sections 280.3, .4, .5, .9, .10, .12, and .14. Also Sections 257.25(1), (2), (5), (6), (7), and (8).

Further specifications as to a "certified" teacher are set out in Section 257.10(11), Chapter 260 of the Code; I.A.C. 640, Chapters 13-17, and 19-20; and Code Chapter 272A.

In considering whether the Iowa statutes are overly obtrusive, Plaintiffs note the Iowa Supreme Court has defined the phrase "equivalent instruction" in the recent case, State v. Moorhead, 308 N.W.2d 60, at 64. The court said "Thus, 'equivalent instruction' is instruction which is equal in kind and amount to that provided in the public schools".

Plaintiffs assert that if their church school is required to have instruction which is "equal in kind and amount", then in essence the State of Iowa is demanding essentially identical instruction in private schools as is ordered in public schools.

Plaintiffs' concern with the words "equivalent instruction" as they interpret them is fueled by their general reaction to public school curriculum and philosophy.

Plaintiffs assert that their religious beliefs are particularly antagonistic to a relatively new philosophy which they call "secular humanism" and they insist that it has essentially taken over the public education system in our nation and state. Included as examples of "secular humanism", or results of following its precepts, are such national ailments as approval or toleration of homosexuality, the general permissiveness of our society particularly with young people, increases in criminality, teaching of Darwin's theory of evolution instead of Biblical Genesis for creation, falling high school student test scores, permitting women to take roles in our society which Plaintiffs assert are Biblically reserved for men, advocacy of a "Freudian" approach to personal problem solving, and in general seeking to solve any personal, local, state, national, or international problem without first seeking God's will as expressed in the Bible, and in teaching generally that man alone without resort to God or God's word can solve his problems. "Fundamentalists" seem to fear that "secular humanists" would substitute group therapy for church membership and would substitute "mental health" for religious salvation.

Moreover, since public schools prohibit teaching of Christianity or of having prayer in classes, Plaintiffs interpret the word "equivalent instruction" to mean that no Christian or religious teachings or Biblical instructions of prayer would be permitted in their private or church school. To Plaintiffs, when a curriculum is "nonreligious", (and public schools must be neutral on religious topics) the same must therefore be "antireligious". Plaintiffs assert

that failure affirmatively to each religious values is tantamount to teaching antireligious values. Because they assert that the Bible is the verbatim inspired word of God, they assert that failure to teach the Bible as they interpret it is wrongful.

Plaintiffs foresee the words "equivalent instruction" in Section 299.1 as therefore meaning "identical instruction" and would put Iowa in the position of the State of Ohio in Ohio v. Whisner, 351 N.E.2d 750.

In Ohio v. Whisner (supra), the Ohio statutes regulated in considerable detail essentially every facet of non-public education to the extent that non-public education was essentially public education conducted on private property. The Ohio Court said, "In this regard, we must conclude that the compendium of 'minimum standards' promulgated by the State Board of Education, taken as a whole, 'unduly burdens the free exercise of religion' ".

However, one of the difficulties with Plaintiffs' attack upon the phrase "equivalent instruction" in Section 299.1 of the Iowa Code is that it is totally hypothetical and is not based upon any facts or experiences of Plaintiffs and is specifically contrary to all experiences to date by all other non-public schools in seeking to provide "equivalent instruction". The record of this case is that no State of Iowa employee or agent under the guise of "equivalent instruction" has ever sought to impose upon Plaintiffs or any other private school any specified detailed information or any particular curriculum or any particular philosophical or theological point of view for presentation of a curriculum. In fact, the record is precisely to the contrary, namely, that a substantial number of different private

schools, sponsored by a variety of churches with various religious or philosophical viewpoints, have operated in harmony under the Iowa statutes without any of the kinds of abuse which Plaintiffs claim might occur. The interpretation then of the phrase, "equivalent instruction" in the State of Iowa by those persons involved in its enforcement is specifically contrary to Plaintiff's fears.

The record is totally devoid of any indication or hint that any State of Iowa employee or agent interprets the phrase "equivalent instruction" in such manner as to require identity of public and private education to the extent referred to in State v. Whisner (supra). There is simply no evidence that under the guise of "equivalent instruction" any one for or on behalf of the State of Iowa is seeking to mold the private educational system of Plaintiffs into the form of public instruction. Neither directly, nor indirectly, nor by misdirection has any Iowa school authority sought to impose "secular humanism" upon Plaintiffs' school or its students or its teachers. (Kerweg v. Ray, 619 F2d 1265, at 1270; Charles City Ed. Ass'n v. P.E.R.B., 291 N.W.2d 663).

One of the elements making up "equivalent instruction", and which is also under attack by Plaintiffs as being too obtrusive, is the portion of Section 257.25 specifying a minimum curriculum. However, several of Plaintiffs' witnesses have testified that they have no religious scruples against teaching all of the subjects set forth in Section 257.25 and in fact advocate that such subjects should be taught and assert that in fact the A.C.E. curriculum includes all subjects in Section 257.25, except a few items which are independently taught in Plaintiffs' school. It is therefore, obvious that the prescribed minimum curriculum

of Section 257.25 is no infringement whatsoever upon either the religious beliefs or practices of Plaintiffs.

Essentially, the objection by Plaintiffs to the curriculum in Section 257.25, is not that it differs with their view of a proper curriculum, but rather that the State prescribes it. Plaintiffs do not object to the curriculum, but only object to the State mandating it. Such objection is merely another way of restating their objection dealt with in Division I-C hereof wherein Plaintiffs assert that the State has no Constitutional regulatory authority in any degree. That argument has already been rejected.

As to the requirement that the "equivalent instruction" be provided by "certified teachers" as required by Section 299.1, Plaintiffs likewise assert unconstitutional over-regulation.

However, in considering Plaintiffs' objection to certification of teachers, it should be noted that two of the teachers currently on the educational staff of Plaintiff church were formerly "certified" by the State of Iowa as teachers and may still be eligible for certification. This Court has examined many of the administrative regulations relating to certification and finds not the slightest degree of religious or ethical requirement or intent in any of them.

While Plaintiffs have made a few specific objections in the "certification" argument, their position is illustrated by objection to a portion of Plaintiff's Exhibit 14 which are certain "Guidelines", which are probably not binding in any event. However, on page 9 of said Exhibit 14 appears the statement, "All programs should emphasize that the ultimate goal is improved interpersonal relations both within and among all segments of society".

Plaintiffs assert that the "ultimate goal" must be glorification of God and not "improved interpersonal relations", and that the goal or philosophy of certified teachers must therefore be warped by the irreligious secular humanism which they see in the quoted sentence. Similar objections are made to other individual sentences throughout several of the exhibits relating to certification. None, however, except by strained interpretation, indicates any religious or philosophical requirement in order to be "certified".

This record is totally barren of any practical difficulties encountered by Plaintiffs in seeking to employe teachers who are "certified" and yet in agreement with Plaintiffs philosophical or religious approach to educational problems. The record is, and this Court finds specifically, that teachers certified under laws of the State of Iowa are currently teaching in a variety of church-sponsored schools, including Catholic schools, Lutheran schools, Seventh Adventist schools and schools of churches having a "fundamentalist" creed seemingly identical with that of Plaintiffs except in resistance to having teachers who are "certified".

It is perhaps noteworthy additionally that Pastor Randy Johnson is a graduate of Faith Baptist Bible College, Ankeny, Iowa. Said college has received accreditation as an "approved" college for the training of certified teachers in Iowa by virtue of application it made on April 12, 1982, which was granted July 8, 1982.

As with Plaintiffs' objection to the minimum curriculum set out in Section 257.25 of the Code, this Court finds that the primary objection of Plaintiffs to teachers being

"certified" is not anything that is implicit in the certification procedure or in teachers who are "certified" but rather, in the fact that it is the State of Iowa that conducts the certification process. This is not an infringement or intereference with Plaintiffs' religious beliefs or activities, and is objected to only on the basis asserted by Plaintiffs in Division I-C hereof, namely, that the State should have utterly no regulation or control over the church school. That argument was rejected in Division I-C.

Additionally, the position of Plaintiffs, namely, that the licensing of teachers and specification of minimum curriculum is unconstitutionally obtrusive is contrary to a substantial body of law in the United States.

In the case, Pierce v. Society of Sisters (supra), the United States Supreme Court said, "No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; . . . that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught . . ." The United States Supreme Court in Meyer v. State of Nebr., 262 U.S. 390, 67 L.Ed. 1042, said "Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, essential indeed, to the public welfare . . ."

In Rice v. Commonwealth, 49 S.E.2d 342, at 348, the Florida Supreme Court said, " . . . In order to impart education to a child, it is self-evident that the instructor must have adequate learning and training in the art of teaching. Obviously, an illiterate parent cannot properly educate

his child, nor can he by attempting to do so, avoid his obligation to send it to school. No amount of religious fervor he may entertain in opposition to adequate instruction should be allowed to work a life-long injury to his child . . ."

To the same point generally, see Meyer v. U.S., 262 U.S. 400, 67 L.Ed. 1042, at 1045; Board of Education v. Allen, 32 U.S. 245-6, 20 Law Ed.2d 1060, at 1067; Meyerkorth v. State, 173 Neb. 899, 115 N.W.2d 585; People v. Turner, 121 Cal. App.2d 861, 263 P.2d 685; State v. Shaver (N. Dakota), 294 N.W.2d 883; Shelton v. Tucker, 364 U.S. 479, at 485, 5 L.Ed.2d 231; Bellian v. Bd. of Ed., 357 U.S. 399, at 406, 2 L.Ed.2d 1433; State of Florida v. M.M., 407 S.2d 987; Wisconsin v. Yoder, 406 U.S. 205, 32 Law Ed.2d 15; Jernigan v. Alabama, 412 So. (2d) 1242, at 1247.

Plaintiffs assert, however, that certification or licensing of teachers does not guarantee quality educators. Such assertion is inevitably true, at least to the same extent that the licensing of doctors does not guarantee a successful operation and licensing of a lawyer does not guarantee victory in litigation. Nevertheless, the licensure of teachers and many others in appropriate professional activities has long been deemed a valid and effective method of insuring some minimum qualifications of the practitioner. So, in Iowa, the certification guarantees minimum education of the teacher and that the teacher has received some training in the best available methods of assisting young people in the learning process.

In any event, the words "equivalent instruction by a certified teacher elsewhere" became important only as an affirmative defense to a charge of violating Section 299.1 of the Code. If a defendant is charged with being the par-

ent or person in control of a school age child who is not attending public school, or apparently an "approved" private school, then as an affirmative defense the defendant may show that the child is receiving "equivalent instruction by a certified teacher elsewhere." The manner of instituting such a charge is referred to in Division I-F.

This Court finds that the words "equivalent instruction" in Section 299.1 and the words, "certified teacher" in Section 299.1 and Chapter 260, and the minimum curriculum requirements in Section 257.25 and 280.9 and the accompanying regulations are not overly obtrusive of Plaintiffs' constitutionally protected religious rights.

As heretofore set forth, when the Court concludes that there is a compelling interest which justifies some intrusion into the constitutionally protected religious rights of Plaintiffs, then the Court is required to balance the interest of the State in the subject matter of regulation as against the degree of intrusion into the rights of religious liberty. In this instance the intrusion consists of requiring "equivalent instruction" by virtue of a prescribed minimum curriculum presented by "certified teachers".

In these circumstances, the practical infringement upon the rights of Plaintiffs is minimal. Their only real objection is not to the practicalities of having the minimum curriculum of Section 257.25 or employing certified teachers as required by Section 299.1, but rather their belief that the State should have no part in either subject. This is merely a repetition of the argument of Plaintiffs heretofore asserted and rejected by this Court as to whether this State has such compelling interest in the subject to justify some regulation.

In Runyon vs. McCrory, 427 U.S. 160, 49 L.Ed. (2d) 415 at 429, the U.S. Supreme Court said, "The Court has repeatedly stressed that while parents have a constitutional right to send their children to private schools and a constitutional right to select private schools that offer specialized instruction, they have no constitutional right to provide their children with private school education unfettered by reasonable government regulation." And the Court in Wisconsin v. Yoder said of the Pierce case, that Pierce gives "no support to the contention that parents may replace State educational requirements with their own idiosyncratic views of what knowledge a child needs to be a productive and happy member of society."

This Court therefore rejects Plaintiffs' contention with respect to intrusiveness of Sections 257.25 and 280.9 minimum curriculum requirements and Section 299.1 requirement of certified teachers, as a basis for obtaining Section 299.1 "equivalent instruction".

Plaintiffs assert, somewhat defensively it seems to this Court, many religious beliefs as though the assertion alone were the basis for holding the Iowa Statutes to be an unconstitutional infringement on their protected rights. But no one is seeking in this litigation to deter the Plaintiffs from teaching their children what their parents and church believe and in the manner they choose, but only to enforce the elastic constraints of Iowa law to see that all children who do not attend public school receive "equivalent instruction" so as to enable them to become good citizens of this Nation.

Plaintiffs have a constitutional right to educate their children beyond the State mandated minimums to whatever

higher intellectual, moral, vocational, physical, or religious goals they may reasonably establish. But Plaintiffs cannot escape the educational minimums by invoking a relious shield. See: People vs. Turner (Calif.) 262 P. (2d) 685; State vs. Rivinius 328 NW 2d 220 (N. Dak.).

E. CONSTITUTIONALITY OF STATUTE REQUIRING "MULTI-CULTURAL, NONSEXIST APPROACH"

Plaintiffs assert that even if the Court should conclude that under the guise of requiring "equivalent instruction by a certified teacher" as an alternative to public school and even if the Court upholds minimum curriculum requirements and teachers certification requirements, still a portion of Section 257.25 of the Iowa Code is invalid and violates their Federal and State Constitutional Rights to free exercise of religion.

Section 257.25 of the Iowa Code provides in part, "In addition to the responsibilities of the State Board of Public Instruction and the State Superintendent of Public Instruction under the provisions of the Code, the State Board of Public Instruction shall, except as otherwise provided in this Section, establish standards for approving all public and nonpublic schools in Iowa offering instruction at any or all levels from the prekindergarten level through grade twelve . . . The State Board shall promulgate rules to require that a multi-cultural, nonsexist approach is used by school districts. The educational programs shall be taught from a multi-cultural, nonsexist approach . . ." Said Section 257.25 thereafter lists minimum curriculum requirements without specifying the amount of time to be spent on each, the level of proficiency to be attained or the phi-

losophy or approach with which the subject matter shall be presented.

Plaintiffs cite a number of Biblical passages which they assert make wrongful a "multi-cultural" society and they point to additional Biblical passages which they interpret as specifying with great precision the respective goals of males and females in our society and their appropriate relationship to each other. Plaintiffs then assert that requiring a "multi-cultural, nonsexist approach" in presenting curriculum to their children would require an educational program directly in conflict with their religious beliefs. It should be noted at this point that Plaintiffs are not asserting they have any constitutional or religious right to act upon their religious beliefs in the impropriety of a "multi-cultural society" or a "nonsexist" society.

Defendants assert that the quoted words in Section 257.25 are not applicable to nonpublic schools such as the school operated by Plaintiffs and Defendants point to Opinion of Assistant Attorney General Steven G. Norby to State Senator Robert M. Carr, dated January 16, 1950. It appears to this Court that the essence of said opinion is that the sentence immediately preceding the one requiring a "multi-cutural, non-sexist approach" refers to the rule making authority of the State Board of Public Instruction in prescribing rules for "school districts", which words are interpreted to exclude nonpublic schools. It is usual for the courts to give deference to opinions of Attorney Generals and such opinions are presumptively correct expressions of the Iowa law. However, such opinions are not binding upon the courts.

While it may be that the Attorney General's Opinion would be ultimately adopted in construing the pertinent

portions of Section 257.25, yet it appears apparent to this Court that said words as applied to Plaintiffs clearly seek to control and regulate the philosophy or approach with which a curriculum is presented to the school children rather than regulating or prescribing a minimum curriculum. The words, "multi-cultural, nonsexist approach" are not by their terms limited to public school districts and do not by their terms exclude nonpublic schools such as the church school of Plaintiffs. On the surface of said words and without resort to somewhat tortured rules of statutory interpretation, the quoted words would be applicable to Plaintiffs' school.

This Court finds that Plaintiffs have a genuine and sincere religious belief that a "multi-cultural, nonsexist approach" to education of their children conflicts directly with their religious beliefs and that none of the Plaintiffs herein either has committed or threatened to commit any act pursuant to such religious beliefs so as to endanger the rights of any other person or organization.

In these circumstances this Court concludes that the sentence "The educational program shall be taught from a multi-cultural nonsexist approach" is unconstitutional as applied to Plaintiffs and is in violation of their right to "Free Exercise" under both the Federal and Iowa Constitutions.

This Court further concludes that the sentence of Section 257.25 as follows, "The State Board shall promulgate rules to require that a multi-cultural, nonsexist approach is used by school districts" is not applicable to nonpublic schools such as the school of Plaintiffs and none of the rules which may have been adopted relating either to a

multicultural, nonsexist approach in school districts or a multi-cultural, nonsexist approach generally are valid as applied to Plaintiffs, specifically including I.A.C. 670-3.5(5).

Section 257.25 shall remain valid as against Plaintiffs except for the sentence above quoted. The statute shall remain valid in full as against all others. (see Harryman v. Hayles, 257 N.W.2d 631, at 634; Walker v. Johnson County, 209 N.W.2d 137, at 140)

F. CONSTITUTIONALITY RE: "VAGUENESS"

Plaintiffs next attack on Sections 299.1 and 257.25 is that they are so vague as to deny constitutional due process. It should be noted that this attack by Plaintiffs is directed at the words, "equivalent instruction" and "certified teachers" of Section 299.1 and not against the mimimum curriculum set out in Section 257.25.

In considering whether the Iowa Statutes are unconstitutionally vague, the standards established by Iowa law should be set forth.

In Knight v. Iowa District Court, 269 NW 2d 430, at 432, the Iowa Supreme Court said, "If the statute's meaning is fairly ascertainable by reliance on generally accepted and common meanings of words used, or by reference to the dictionary, related or similar statutes, the common law or previous judicial constructions, due process is satisfied. Citing cases . . . If vagueness can be avoided by reasonable construction, consistent with the statute's purpose and traditional restraints against judicial legislation, we are duty bound to give Chapter 28A that interpretation."

Under Knight v. Iowa District Court (supra) the question of validity of a statute when challenged as being unconstitutionally vague requires two determinations: "(1) It must give a person of ordinary intelligence fair warning of what is prohibited, and (2) It must provide explicit standards for those who enforce it."

As to the challenge of Constitutional vagueness of the words "certified teacher" this Court notes that the said words have already been defined by State v. Moorhead, 308 NW 2d 60, at 64, in which the Court said, "Section 257.10(11), the Code, invests the State Board of Public Instruction with authority over certification of instructional personnel. Chapter 260, the Code, and 670 I.C.A. Chs. 13-17 deal extensively with the requirements of teacher's certification. These related provisions provide an ascertainable definition of the term 'certified teacher.' The term should cause no difficulty for citizens who desire to obey the statute."

With respect to the term "equivalent instruction" the Court notes that said words have been defined by State v. Moorhead in the context of that case and the Court further notes that considerable elasticity is necessary in determining what is "equivalent education" so as to avoid over specificity as existed in Ohio v. Whisner (supra).

Moreover, in considering the word "equivalent", it should be noted that in the pattern of Iowa School statutes, the initial question of whether a person having control of a child is or is not violating the Iowa Compulsory Education statute, Chapter 299, depends upon a determination by a truant officer. It is the duty of a truant officer to report nonattendance at public school to the Board of Ed-

ucation, and if the Board of Education determines as a factual matter that the education of a given child is not "equivalent" to the public school education, then it may institute criminal proceedings against the person in control of the child. It is then a matter of fact for the court to determine whether or not the instruction given a child is or is not "equivalent".

The foregoing has been the approved procedure in Iowa at least since the year 1928, in which year an attorney general's opinion at page 293 stated in part, "The enforcement of the above statute and the compulsory education statutes is delegated to the Board of Education and other officers. Any officer charged with this duty may determine for himself whether or not the instruction is equivalent and, if not, prefer charges against the parent.

"It is then a question for the court and the jury to determine whether or not there has been a violation of the statute and, if so, to inflict the penalty prescribed."

Similarly, Attorney General's opinion on December 2, 1977, cited as 1978 Opinion of Attorney General, page 320 to Calvin R. Anderson, Winneshiek County Attorney, states in part, " . . .The duty of determining whether a private or parochial school is complying with the law in respect to teaching common school branches (grade school courses) rests on the president of the school board of the district where the school exists . . . The duty of enforcing the provision of the Compulsory Education Act was intended by the legislature to be imposed upon the school boards . . . This responsibility is now placed with the designated truant officer pursuant to Section 299.10 of the Code.

" . . .

"Accordingly, it is our view that the determination of the equivalency of instruction is to be determined by the local school board and such determination must take into consideration the requirements set out by Section 257.25 of the Iowa Code . . ."

As above noted, Section 257.25 contains a list of the general subject matter of the curriculum for various groups of school grades which must be presented in Plaintiffs' school. While not directly at issue here, it appears that the A.C.E. curriculum, with minor supplements, will satisfy the requirements of Section 257.25 insofar as they relate to the question of "equivalent instruction" under Section 299.1.

This Court concludes that whether particular "instruction" is "equivalent" is a question of fact which is to be determined in the first instance by the local school board and ultimately by determination, if necessary, in a court of law. Moreover, under Wisconsin v. Yoder (supra), leaving "equivalency" as a fact question appears to be approved by United States Supreme Court.

This Court notes that the State of Iowa does not either by statute or regulation specify who shall determine the question of "equivalency" of instruction, and it may well be that such matter, although settled by the law above indicated, would be the appropriate subject for further legislation. If Iowa statute directly authorized either the local school board or State Board of Public Instruction to determine the issue of "equivalency", then that matter could be investigated by persons with particular expertise on the subject. And the matter could then be an appropriate subject for an administrative hearing and court appeal if

necessary. For example, in State v. LaBarge, 257 A.2d 121, the question was whether under a Vermont statute the decision of "equivalency" was properly made "by the State Department of Education and certified to the school directors", as provided by Vermont statutes.

In considering whether the subject of equivalency should properly be an ultimate court or administrative decision, this Court notes that in the recent case Hendrick Hudson District of Education v. Rowely, — U.S. — , 73 L.Ed.2d 690, at 713, the United States Supreme Court said, "We have previously cautioned that courts lack 'specialized knowledge and experience' necessary to resolve 'persistent and difficult questions of educational policy.'" As indicated above, it may well be that the question of "equivalent instruction" could be better regulated by a statutorily approved procedure than at present.

Although the subject of "equivalency" might be better provided for than at present in Iowa statutes, this Court concludes that in view of the various statutes, attorney generals' opinions, case law and long standing procedure for determination, the question of "equivalency" is a fact question ultimately decided by the Court and that neither the words "equivalent instruction" nor the words "certified teacher" are unconstitutionally vague.

G. ALTERNATIVE REGULATION

Plaintiffs have asserted that even if this Court concludes that the state has such a compelling interest in the education of its young citizens as to justify some regulatory measures which would to some extent infringe upon the Constitutional Rights of Plaintiffs, then the Iowa system

of requiring, "equivalent instruction" with "certified teachers" and with a minimum curriculum under Section 257.25 is unnecessarily obtrusive. Plaintiffs advance the thesis that standardized testing alone is sufficient.

In the first instance, this Court cannot find from the record herein that standardized testing alone is a sufficient assurance that students in nonpublic schools will receive "equivalent instruction". Secondly, the Court cannot say on this record that standardized testing alone would be less obtrusive than the Iowa system of requiring certified teachers and a minimum curriculum. Third, several of Plaintiffs have rejected the suggestion.

The record herein indicates that standardized tests are an important tool in determining whether a child is absorbing the education offered through any given educational system, but that it is not a final or definitive measurement. At least one of the problems with testing alone is that the test may reflect only acquaintanceship with the precise wording of the text book, rather than a general understanding of the subject matter. A student may answer correctly a question in terminology which is repetitive of the text, and yet not truly understand what he is answering; and is alternate terminology is used the student fails. (see Plaintiffs' Exhibit 25, page 218)

In the case at bar, the record shows that on standardized tests the children of Plaintiff church school as a group rank above the national average but are below the Iowa average and are below the Charles City public school average. The comparison is largely meaningless.

This Court, in considering the relative standing of church school and public school students, has no initial

standard by which to make comparison. That is, there is no way of knowing where the present church-school students stood either individually or as a group while attending Charles City public schools or where they would be ranked if they attended the public school now. It may be that all of the church-school students are below average in ability, and the fact of their test score average is high praise to their educational system; but it is just as likely that they are much above average in ability and the fact they do not test higher is condemnation of their educational system. Additionally, it may be that their present ranking is attributable to prior attendance at public school rather than a one year attendance at the church school, and on the other hand it may equally be argued that except for the bad effect of the public school in prior years they would be much higher in test scores today.

This Court finds that the record is not sufficient to justify a conclusion that standardized testing alone would measure whether the children are receiving "equivalent instruction".

Secondly, even if standardized testing alone were sufficient, there is considerable doubt that such tests could be accomplished without more rather than less interference with the constitutionally protected religious rights of Plaintiffs.

It appears likely that were Iowa to use standardized tests alone as a measure of "equivalent instruction", then those administering the test would have to prescribe the test, prescribe the environment and method of giving the test and provide physical surveillance of the students while taking the test and conduct the grading process. In order

to permit testing alone to determine "equivalent instruction" it appears to this Court that the State would have to specify with great particularity the exact content of courses presented to the students and would have to specify the order of presentation of the courses to the students and would have to specify the emphasis placed thereon.

Third, Pastor Johnson, in his testimony, rejects the idea of State supervised testing and asserts he would refuse State testors admission to classrooms of his church school.

Finally, the question occurs as to what would the State do if a child "failed" the test. Could the State then demand that the child attend public and not church school, contrary to Pierce vs. Society of Sisters (supra); or would the State then be required so specifically to prescribe the curriculum and its manner and time and philosophy of presentation as to offend the mandates enunciated in Ohio vs. Whisner?

This Court finds that on the record herein, standardized testing alone is not a sufficient measurement of whether a child in a nonpublic school is receiving "equivalent instruction" so as to satisfy Iowa's compelling interest in education of the children, and additionally, this Court finds that standardized testing alone would not be less obtrusive into the Constitutionally protected rights of Plaintiffs. See State of Nebraska vs. Faith Baptist Church 301 NW 2d 571 at 579. But also contra, Kentucky State Board vs. Rudasill 589 SW 2d 877 at 884.

Moreover, this Court would speak in cautionary tones as to the adequacy of the A.C.E. curriculum alone to satis-

fy the educational goals of Plaintiffs to prepare children to be good citizens of Heaven or the educational goals of Defendants to prepare the same children to be good citizens of this nation.

This Court in Division I-C of this ruling has indicated its belief in the necessity for good citizenship of independent capacity of our citizens to learn, to recall, and to reason. So long as the educational system provides no adequate training in the independent evaluation of ideas, there can be no educational improvement in the capacity to reason. Moreover, in the absence of a person competent as a teacher, whether certified or not, to assist the individual student in seeing his errors which result in failure of a given progress test, then the child is merely repeating his own mistakes and repracticing his own errors.

Additionally, the fact that a class may be "quiet" does not necessarily indicate that a learning process is underway. That great essay on the free press which is likewise a primary argumentation on free government, Areopagitica, states, "Where there is much desire to learn, there of necessity will be much arguing, much writing, many opinions; for opinion in good men is but knowledge in the making".

In considering possibly less obtrusive alternates to the present Iowa statutory system, this Court has also given consideration to some regulatory system of teacher qualifications other than the present requirement that the teacher be "certified". For instance, this Court has considered as a possible alternative that the teacher in a nonpublic school such as Plaintiffs be required to have educational qualifications which are the "equivalent" of a cer-

tified teacher or which would "qualify the person for certification" as a teacher, and similar approaches to the general problem of having the person in charge of teaching.

The difficulties which this Court meets in any such modified approaches is the adamant rejection by Plaintiffs of any "regulation" affecting their church school. It therefore appears unlikely to this Court that any less intrusive system than requiring a "certified teacher" would meet any greater degree of approval by Plaintiffs than the present system. In other words, it appears to this Court that any regulation by the State in any degree of the qualifications of a person who acts as monitor or teacher in Plaintiffs' church school would be condemned by Plaintiffs with equal vigor to their condemnation of having the teacher "certified".

In these circumstances, Plaintiffs effectively eliminate any possibility of designing for their specific benefit a regulatory system of education of the children which could be "less intrusive" since Plaintiffs reject any system which is in any degree intrusive. To that extent, the asserted religious beliefs of Plaintiffs thwart the intended Constitutional mandates of "balancing" competing interests when the State has some "compelling" interest in a subject in conflict with religiously grounded beliefs.

H. CLAIM AGAINST SELF-INCRIMINATION

Plaintiffs assert that the reporting section, Section 299.3 of the Iowa Code, violates their right against self-incrimination as protected by the Fifth Amendment to the U.S. Constitution.

Section 299.3 of the Iowa Code provides in part, "Within ten days from receipt of notice from the secretary of the school district within which any private school is conducted, the principal of such school shall, once during each school year . . . furnish to such secretary a certificate and report in duplicate of the names, ages, and number of days attendance of each pupil of such school over seven and under sixteen years of age, the course of study pursued by each such child, the texts used, and the names of the teachers, during the preceding year and from the time of the last preceding report to the time at which a report is required . . ."

Section 299.4 of the Code provides in part, "Any person having control of any child over seven and under sixteen years of age, who shall place such child under private instruction, and not in a regularly conducted school, upon receiving notice from the secretary of the school district, shall furnish a certificate stating the name and age of such child, the period of time during which such child has been under said private instruction, the details of such instruction, and the name of the instructor."

Section 299.1 of the Code provides in part, "Any person having control of any child over seven and under sixteen years of age . . . shall cause said child to attend some public school . . .

" . . . In lieu of such attendance, such child may attend upon equivalent instruction by a certified teacher elsewhere."

Section 299.6 of the Code makes it a misdemeanor for any person to violate the statutory provisions above set out.

The pattern of the above statutes is apparent. Section 299.1 requires the parent or other person in control to send children between seven years and sixteen years of age to a public school or to obtain "equivalent instruction by a certified teacher elsewhere". The person "having control of any child" would be guilty of a simple misdemeanor under Section 299.6 if the child is not sent to public school or given "equivalent instruction by a certified teacher elsewhere".

The statute obviously contemplates two alternatives to attendance at public school, namely, a private school as referred to in Section 299.3 or to "private instruction" under Section 299.4.

If a child is attending public school, then the compulsory education provisions of Section 299.1 are satisfied. However, for the State pursuant to its "compelling interest" to be advised of the education of children outside the public school system, then the State must require reports either from private schools or from persons providing "private instruction". Section 299.3 requires private schools to give the necessary report and Section 299.4 requires a person providing "private instruction" to give the report so that determination can be made whether there is a violation of Section 299.1 by the "person having control of any child over seven and under sixteen years of age". It is apparent that neither Section 299.3 nor Section 299.4 contemplates prosecuting either the private school or the private instructor for violation of the compulsory education provisions of Section 299.1 since neither the private school nor the private instructor is a "person having control of any child over seven and under sixteen

years of age". Therefore, the information required by Section 299.3 or 299.4 is not seeking information as a basis of prosecution either of the private school or of the private instructor, but rather for prosecution of the "person having control of any child over seven and under sixteen years of age".

It is therefore apparent that the Iowa statutes above referred to do not require self-incriminating information since the information sought is not the basis of prosecution of the person or organization from whom the information is sought. It is not "self-incrimination" which is involved, but incrimination of the "person having control of any child over seven and under sixteen years of age".

The only way in which either a private school under Section 299.3 or a private instructor under Section 299.4 could be subjected to prosecution under Section 299.6 is for the private school or private instructor to refuse to give the demanded information. The giving of the information could have no criminal consequences, self-incriminating or otherwise, but only the refusal to give information.

Since the State has a "compelling interest" in the education of its children, the State has a right to gather information from neutral sources as to the names of children either in private schools or undergoing private instruction as a basis for determining whether the child is receiving "equivalent instruction by a certified teacher elsewhere" as required by Section 299.1. The requirement that such information be reported either by the private school or private instructor is pursuant to a compelling interest of the State and is not designed to inhibit any

association or to lay the foundation for any prosecution or to control any belief, religious or otherwise, of any person or organization whatsoever.

In these circumstances, the Court concludes that neither Section 299.3 nor Section 299.4 is unconstitutional as infringing the religious rights of Plaintiff Church or Plaintiff Parishioners, nor does it unconstitutionally demand self-incriminating evidence.

I. CONSTITUTIONALITY RE FREEDOM OF ASSOCIATION AND RIGHT OF PRIVACY

Plaintiffs further assert that Section 299.3 of the Iowa Code is unconstitutional insofar as it requires reporting of certain information because it thereby violates the Plaintiffs' constitutional right to freedom of association. Specifically, they assert that the reporting statute will have a "chilling effect" upon the willingness of Plaintiffs to send their children to the church school.

Once again, if the Court finds there is any burden whatsoever of the statute upon the Plaintiffs' right of association, then the Court is required to "balance" the degree of intrusion on the Plaintiffs' constitutionally protected rights as against the interest of the State in demanding the information.

This Court finds that some of the parents of children attending Plaintiff church school do object to the church school providing such information, believing as they do that the existence of their school, the nature of the curriculum, the persons retained as "monitors" and the fact that the school is a "ministry" insulate the church school from any intrusion for educational regulatory purposes of any de-

gree. However, this Court finds that the degree of intrusion by requiring the church school to provide such information is relatively minimal.

The intrusion of the reporting statute requires some contact of Church to State. Plaintiffs, however, assert the State has no interest whatsoever in education of the children, whereas, the State asserts and this Court has found and concluded in Division 1-C hereof, that the State has a "compelling interest" in such educational process.

In considering Plaintiffs' assertion of unconstitutionality because of deterring freedom of association, the U.S. Supreme Court has indicated that the State may compel disclosures which affect the right to freedom of association if, on balancing of interests, the State interest is sufficient to justify the "deterrent effect." (See NAACP vs. Alabama, 357 U.S. 449, 2 L.Ed. (2d) 1488)

In this case, the interest of the State in requiring the information is founded upon its compelling interest that the children who are not attending public school obtain "equivalent instruction elsewhere by a certified teacher". This Court finds that the State's interest in education of the children is sufficient to justify the relatively minor infringement upon the religious beliefs of some of Plaintiffs that the information should not be provided. Attorney General vs. Bailey 436 NE (2d) 139 at 147. Whalen vs. Roe 429 U.S. 589; 51 L.Ed. (2d) 64, at 73.

J. RIGHT OF PRIVACY

Plaintiffs further assert that demanding the information under Section 299.3 of the Iowa Code invades their constitutionally protected right of privacy. There are several different kinds of "rights" which have been held

within the general category of "right of privacy" and Plaintiffs have not delineated the specific nature of the right presumably invaded.

Generally speaking, the constitutional "right of privacy" protects citizens, (1) from making public disclosures of personal matters, and (2) in making certain personal decisions, and (3) to be free of government surveillance.

In considering whether required reports of information under Section 299.3 require disclosures of constitutionally protected personal matters, this Court does not find that the "personal matters" sought to be disclosed are of a nature heretofore the subject of constitutional protection.

As to the second type of "right to privacy", the Court does not find that the information required to be reported relates to the kind of "important personal decisions" that are constitutionally protected.

As to the third type of "privacy", namely, the right to be free of government surveillance, this Court believes that the right of parents to direct the education of their children is within the usually accepted scope of constitutional "right to privacy". See Pierce vs. Sisters of Mercy (supra). However, the information requested is pursuant to a compelling State interest in education of the children, and to have the church school provide the information in no way interferes with the parents' right to send their children to Plaintiff church school or of Plaintiff church school to receive and educate the children within the broad directive guidelines of "equivalent instruction" and the information demanded by Section 299.3 is not indefinite

and the information is relevant to the purpose for which sought, namely, to determine compliance with its compulsory school attendance law in Section 299.1.

The Court therefore concludes that Section 299.3 does not violate Plaintiffs' constitutional right of privacy. (See Attorney General vs. Bailey, 436 NE 2d 139)

K. VALIDITY OF RULES

In connection with Plaintiffs' attack upon constitutionality of Administrative Regulations adopted pursuant to Statutory grant of authority, this Court has read the portions of the Iowa Administrative Code relating to the subjects herein. This Court finds that the portions of the Administrative Code referred to by Plaintiffs are long, prolix, and in some instances, in the opinion of this Court, not useful.

By way of example only, a Rule purports to give definitions in Section 4.4 of such words as "available", "competent", "diagnosis", and "reasonable".

Rules 4.12 provides in part, "Competent educators maintain effective human and interpersonal relations, skills, and therefore: . . . 3. Shall not show disrespect . . . 7. Shall not assign unreasonable tasks . . . "

In Chapter 14, relating to Classification of Certificates, appears the following: "670-15.38(257). Teacher Associate . . . The applicant shall show moral and physical fitness for the position and freedom from communicable diseases".

Section 670-19.13(257) provides in part, " . . . curricular programs for the education of teachers should be designed to achieve the desired objectives".

This Court has read through Chapters 14, 15, 16, 17, 19, 20, 21, 22, and 23 of the Administrative Code. Rules such as requiring a school bus to have a properly ventilated alternator appear therein.

As above indicated, it is the view of this Court that many of the said Administrative Regulations attacked by the Plaintiffs are long and prolix. It may be useless to set out in words those standards which so inhere in the subject purported to be regulated.

Although this Court may view many of said Rules as not useful, this Court finds no hint therein or anything which is philosophical or religious in nature. While many of them may tread upon credulity, they do not tread upon the constitutionally protected religious rights of Plaintiffs. Even Section 670.3.5(3) defining the words "multicultural" and "nonsexist" does not appear to tread upon the religious sensibilities of Plaintiffs.

This Court therefore concludes that the Iowa Administrative Rules do not infringe upon Plaintiffs' constitutionally protected rights to religious freedom.

DIVISION II. FINDINGS AND CONCLUSIONS RE FRED M. PRUESSNER, ET AL., PETITIONERS V. DR. ROBERT BENTON, SUPERINTENDENT, ET AL., RESPONDENTS, CIVIL NO. 23190

A. FINDINGS OF FACT

The cause of action herein considered is an appeal to this Court from administrative action by State Board of Public Instruction and which cause of action was consolidated herein for purposes of trial.

In this Division the Court intends to deal with the legal issues unique to the administrative appeal and the constitutional issues unique to the appeal which are not ruled upon in other divisions of this decision relating to Equitable Cause No. 22891. Many of the constitutional issues which might relate to this administrative appeal are discussed in other divisions hereof and such discussions will not be repeated and the ruling on such constitutional issues so far as pertinent to this administrative appeal is by this reference incorporated herein and made a part hereof as fully and completely as though set out herein and repeated in detail.

The Petitioners herein are parents of school-age children who are members of Calvary Baptist Church, Charles City, Iowa, and whose children either attended or are contemplating attending the school operated as a part of said church, although some of Petitioners are parents who are not members of the said church but whose children attend or contemplate attending the church school.

The said parents as Petitioners made application to the State Superintendent of Public Instruction for exemption from the requirements of the compulsory education law, Chapter 299 of the 1981 Code of Iowa, pursuant to Section 299.24 thereof.

This Court finds that the Petitioners are sufficient in number and in standing to make the application for such exemption under Section 299.24 of the Iowa Code. The Court further finds that Calvary Baptist Church, Charles City, Iowa, is a recognized church or religious denomination established in the State of Iowa for more than ten years prior to July 1, 1967.

The Applications for Exemptions by the various Petitioners were identical in form and all allege that the church, namely, Calvary Baptist Church, Charles City, Iowa, has principles or tenets that differ substantially from the objectives, goals, and philosophy of education embodied in standards set forth in Section 257.25 of the Iowa Code and the Administrative Rules adopted pursuant thereto. Attached to each application was a statement of "Educational Convictions and Philosophies" of Calvary Baptist Church (Exhibit A attached to the Petition). Also comprising a part of the record before the State Board was Exhibit B, a booklet entitled, "Minimum Standards for the Amish Parochial Private Elementary Schools of the State of Iowa", and also attached is Exhibit C which was an affidavit by Rev. Randy Johnson, Pastor of Calvary Baptist Church. Pursuant to Section 299.24, the applications were considered by Dr. Robert D. Benton, State Superintendent of Public Instruction and by letter dated September 8, 1982, he recommended to members of the State Board of Public Instruction that the exemption be denied. The State Board of Public Instruction at a meeting on September 8, 1982, voted to approve the recommendation of Dr. Benton and to deny the exemptions.

In Petition for Judicial Review, filed herein September 22, 1982, the Petitioners allege that the action of the State Board should be reversed and the parents exempted under Section 299.24 of the Code or alternatively that the Court excuse the parents under Section 299.2(3) of the Code for the alleged reasons that the State Board decision was (1) unreasonable, arbitrary, and capricious, and (2) violated the Petitioners' rights under the U.S. and Iowa Constitutions.

The Petitioners' petition for judicial review, was consolidated by this Court with previously pending equitable action for declaratory judgment in then pending Cause No. 22891. Upon trial of the two consolidated causes of action, the parties stipulated that the record on this appeal from administrative action before the State Board of Public Instruction would be the record before said State Board as certified to this Court.

The appeal record herein does not indicate that in any of the administrative proceedings, any issue was raised or considered as to exemption of any children of Petitioners from compliance with Section 299.1 of the Code under the provisions of Section 299.2(3) of the Code. This Court for purposes of this administrative appeal, acts in a restricted appellate capacity only, and has no original jurisdiction to consider on appeal any issues which were not raised in the administrative proceedings. Therefore, this Court will not pass herein on the issue of exemption under Section 299.2 (3) of the Code as requested by Petitioners in their prayer for relief herein. (See Temple vs. Vermeer Mfg. Co., 285 NW 2d 157, at 159)

B. CLAIM OF BEING UNREASONABLE, ARBITRARY AND CAPRICIOUS

The first ground of Petitioner's Appeal from administrative action was that the action denying the requested exemption was unreasonable, arbitrary and capricious.

The exemption sought is pursuant to Section 299.24 of the Iowa Code generally referred to as the "Amish Exemption" and which statute provides in part, "When members or representatives of a local congregation of a recognized church . . . established for ten years or more within

the State of Iowa prior to July 1, 1967, which professes principles or tenets that differ substantially from the objectives, goals, and philosophy of education embodied in standards set forth in Section 257.25, and rules adopted and implementation thereof, file with the State Superintendant of Public Instruction proof of the existence of such conflicting tenets or principles, together with a list of the names . . . of all persons of compulsory school age desiring to be exempted from the compulsory education standards law, whose parents . . . are members of the congregation . . . the State Superintendent, subject to the approval of the State Board of Public Instruction, may exempt the members of the congregation . . . from compliance with any or all requirements of the compulsory education law and the educational standards law for two school years. When the exemption has once been granted, renewal of such exemptions for each succeeding school year may be conditioned by the State Superintendent, with the approval of the Board, upon proof of achievement in the basic skills . . . by persons of compulsory school age exempted in the preceding year, which shall be determined on the basis of tests or other means of evaluation selected by the State Superintendent with the approval of the Board . . . ".

In seeking to establish right to exemption under Section 299.24 of the Code, the Petitioners submitted a substantial volume of written information relating to Calvary Baptist Church, its necessary and collateral religious views, preferences and practices. The purpose of such filing was, of course, to establish right to the exemption by a religious denomination that "professes principles or tenets that differs substantially from the objective, goals,

and philosophy of education embodied in standards set forth in Section 257.25 . . . "

In referring to a similar application for exemption, contemporaneously filed, Petitioners' attorney stated, "The purpose of Section 257.25 is to prepare children to be good citizens of the state in which they live. The purpose of the Biblically-based education provided by . . . church school is to prepare the students to be good citizens of Heaven". The assertion, even if true, does not prove differences in objectives, goals, or philosophy.

One of the substantial problems faced by Petitioners is that while they assert their own beliefs and faith, they nowhere point out wherein the same conflict to the slightest degree with the provisions of Section 257.25 of the Code, except with respect to the phrase "multicultural-nonsexist approach" which is dealt with in other sections hereof. Petitioners seem to assert their own faith as though someone were seeking to deter them from teaching it in their own school and such is not the fact.

For example, under the heading of "Parents' Responsibilities", they assert, "We believe that parents' responsibility in the area of education is to educate their children according to the word of God . . . ". Petitioners are entirely free to so believe and to so teach in their own school.

Under the heading of "Church-Purpose", Petitioners assert, "We believe the supreme purpose of the New Testament Church is three-fold: (1) to get people saved; (2) baptize them into the church; (3) teach them to observe the whole word of God . . . ". The Petitioners are free to so believe and to so teach in their own school.

Under the heading "Government-Responsibilities", Petiitoners assert, "We believe government has the God-given responsibility to protect law-abiding citizens from law-breaking citizens . . . ". The Petitioners are free to so believe and to so teach in their own school.

Under the heading "Education-Source," the Petitioners assert "We believe that Biblical and proper education begins with the word of God and the Lord Jesus Christ . . .". Petitioners are free to so believe and to so teach in their own school.

Under the heading "Scope" Petitioners assert, "We believe that the scope of a Biblical education is found in the example of Jesus Christ . . . ". Petitioners are free to so believe and to so teach in their own school.

Under the heading "Curriculum", Petitioners assert, "We believe that every subject area of education must have a Bible base and a Bible philosophy . . .". Petitioners are free to so believe and to so teach in their own school.

In the Application for Exemption by the respective Petitioners, they assert in Paragraph 4, in Subparagraph A through K, inclusive, except in Subparagraphs H and I, the various beliefs of their church as they relate to education. Once again, the Petitioners are free to so believe and to so teach in their own school. Subparagraphs H and I only assert their opinion that their own religion is in conflict with Section 257.25.

This Court has examined and reexamined Section 257.25 and finds neither in that Section nor in Section 299.1 the least reference to "objectives, goals, and philosophy of education" which conflicts with the stated, "objectives, goals, and philosophy of education" as asserted by Peti-

tioners. Except for the phrase "multicultural-nonsexist approach" heretofore dealt with, Section 299.1 only requires the children of Petitioners to obtain "equivalent instruction" by "certified teachers" with the minimum curriculum set out in Section 257.25 plus Section 280.9.

The only conflict of the "objectives, goals, and philosophy of Education" between the religious beliefs of Petitioners and the Iowa Statutes is the belief by Petitioners that the State should have no part in regulating to any degree the education of children. That assertion by Petitioners has been referred to in Division I-C of this Ruling and will not be repeated herein. Suffice it to say that the Petitioners' assertion of having the exclusive right of education of their children without any effective regulation or control on the part of the State has been heretofore rejected.

The Petitioners remain free to teach the subjects referred to in Section 257.25 in the manner and with the philosophy or religious approach which they desire, subject only to the "compelling interest" of the State as evidenced by statutes referred to in Division I hereof.

Moreover, the question on this appeal is not whether this Court if sitting in original adjudication of the application herein would reach an identical result, but whether the decision in fact reached by the administrative agency authorized by law to consider the same was arbitrary, unreasonable, and capricious.

As above noted, Dr. Benton made recommendation to the State Board as he is required to do by Statute. The essence of his recommendation for denial of the requested exemption is contained on page three of his letter of Sep-

tember 8, 1982, to the State Board of Public Instruction, in which he states, "I have examined with great care all the documents submitted to me . . . I find nothing in the documentation presented to me by Mr. Hastings (counsel for applicants) on behalf of the parents involved with these requests for exemption that in any way conflicts with the provisions of Section 257.25 . . .".

To the argument of Applicants-Petitioners that they should not be required to have licensed teachers, Dr. Benton's recommendation of September 8, 1982, states, "The Courts have ruled time after time that the State does have the duty and the right to establish educational standards, and license those who will practice the teaching profession. In the case of Iowa, the State has been, in my opinion, most general in establishing those educational standards (257.25) and providing for the licensure or certification of teachers. It does not prescribe any specific philosophical or religious base for either those standards or licensure requirements, nor does it prohibit the study or practice of any philosophical or religious base for the standards or licensure requirements".

Insofar as Dr. Benton's letter asserts that the principle of teacher licensing has been often upheld as against religious scruples to the contrary, it is born out by the cases cited by this Court in Division I of this Ruling. Moreover, it is apparent that except as to the one sentence of Section 257.25, referred to in Division I of this Ruling, that said Section does not require any "specific philosophical or religious base" for education.

This Court finds that Dr. Benton did consider fully and carefully the materials submitted to him on behalf

of Petitioners for the Section 229.24 exemption, and did make a thorough and careful summary of the applicants' position and their entitlement to the requested exemption, and Dr. Benton did make a recommendation of denial to the State Board of Public Instruction. The State Board of Public Instruction did consider carefully the material presented, the precedents involved, and the recommendations of Dr. Benton, and did with care and deliberation accept the recommendations of Dr. Benton and affirm his decision. On this administrative appeal, the question before this Court is not whether on presentation of identical testimony and evidence this Court would reach a different conclusion than that reached by the administrative agency, but whether the administrative agency did, in fact, consider the matters presented, and whether its decision is reasonably responsive to the evidence and testimony on the various issues. This Court is bound by the agency finding when it has substantial support in the evidence and is not erroneous as a matter of law. (See Cook vs. Iowa Dept. of Job Service, 299 NW 2d 698; Iowa Civil Rights Commission vs. Woodbury County, 304 NW 2d 443; Ward vs. Iowa Department of Transportation, 304 NW 2d 236; 2 Am Jur 2d (Administrative Law, Section 650-652) page 503-513)

It is not appropriate for this Court to seek reasons for the reversal of an administrative finding, but rather it is the duty of this Court to examine the record carefully to determine whether the ruling was unreasonable, arbitrary, and capricious on the basis of the standards set out by the Iowa Supreme Court in the above cases.

In Churchill vs. D.O.T. (supra), the Iowa Supreme Court defined the terms as follows: " . . . The terms

'arbitrary' and 'capricious', when applied to test the propriety of agency action, are practically synonymous and mean that the action complained of was without regard to established rules or standards. Citing case . . . or without consideration of the facts of the case. Citing case. 'Unreasonable' has been said to mean action in the face of evidence as to which there is no room for difference of opinion among reasonable minds. Citing case. Or not based on substantial evidence.".

This Court concludes that the decision of Dr. Robert Benton as State Superintendent, as approved by the State Board of Public Instruction is not arbitrary, capricious, or unreasonable.

C. CONSTITUTIONALITY OF SECTION 299.24 RE ESTABLISHMENT CLAUSE

The Petitioners assert that Section 299.24 of the Iowa Code is unconstitutional as being in conflict with the clauses in the Federal and Iowa Constitutions prohibiting Federal or State laws "respecting the establishment of religion".

When the constitutionality of a statute is alleged to violate the so-called Establishment Clause, this Court is required to proceed through a three-test process outlined in Lemon vs. Kurtzman, 403 U.S. 602, 29 L.Ed. 2d 745, as follows: "First, the statute must have a secular legislative purpose; Second, its principal or primary effect must be one that neither advances nor inhibits religion, citing cases; Finally, the statute must not foster 'an excessive governmental entanglement with religion', citing cases".

In considering the first problem, it should be apparent that the purpose of Section 299.24 relates to the secular purpose of education of children in the State of Iowa. The United States Supreme Court in Yoder vs. Wisconsin has exempted children of Amish parents in the State of Wisconsin from complying with the Wisconsin Compulsory Education law beyond the eighth grade level. The obvious purpose of Section 299.24 is to provide legislatively for the same general educational result decreed judicially in Yoder vs. Wisconsin, namely, to avoid trampling religious rights while enforcing an unneeded education. The purpose of Section 299.24 is no more the legislative "establishment of religion" than is Wisconsin vs. Yoder, the judicial "establishment of religion". The purpose is to exempt from the Compulsory Education Law those persons who by their religious precepts are not fully integrated into the activities of our society and do not need the same degree of education as is necessary for others in our society.

As to the second requirement under Lemon vs. Kurtzman (supra) it is apparent that the statute herein "neither advances nor inhibits religion". There is no indication that granting or withholding the exemption herein has any effect on a "recognized church or religious denomination" under Section 299.24. The granting or withholding of the exemption has nothing to do with advancing or inhibiting religion.

As to the third test under Lemon vs. Kurtzman, the statute does not materially affect the degree of governmental entaglement with religion. If the exemption under Section 299.24 is not granted, then children not attending

public school must obtain "equivalent instruction elsewhere" by "certified teachers" with a minimum curriculum prescribed by Section 257.25 and certain information must be provided under Section 299.3. If the exemption is granted under Section 299.24, then certain information is demanded similarly to Section 299.3 and a curriculum is required somewhat less extensively than in Section 257.25 and additional testing and evaluation is provided for. This Court in Division I hereof indicated that the pattern of State involvement in education establshed by Sections 299.1, 257.25, and 299.3 is not unconstitutionally intrusive and this Court now holds that the provisions of Section 299.24 in lieu of said prior statutes are not materially more or less intrusive and do not establish an excessive entanglement.

This Court has examined Section 299.24 in view of the numerous United States Supreme Court cases interpreting the Federal Establishment Clause. In Zorach vs. Clauson, 343 U.S. 306, 96 L.Ed. 954, the Supreme Court said, "The government must be neutral when it comes to competition between sects". In Abington School District vs. Schempp, 347 U.S. 203, 10 L.Ed. 2d 844, the Court said, "The fullest realization of true religious liberty requires that government . . . effect no favoritism among sects . . . and that it work deterrents to no religious belief." In Epperson vs. Arkansas, 393 U.S. 97, 21 L.Ed. 2d 228, the Court said, "The First Amendment mandates governmental neutrality between religion and religion . . . The State may not adopt programs or practices . . . which 'aid or oppose' any religion . . . ".

This Court has examined Section 299.24 in light of the foregoing case law and has sought to apply a standard

of strict scrutiny. This Court pursuant thereto concludes that Section 299.24 is not in violation of the Establishment Clauses of the Federal or State Constitutions and the assertion by Petitioners to the contrary is rejected. Am. for Sep. of Ch. and State vs. Benton 413 F. Supp. 955, at 958.

D. CONSTITUTIONALITY OF SECTION 299.24 RE EQUAL PROTECTION CLAUSES

The next attack by Petitioners on Section 299.24, is an assertion that the same denies equal protection of the laws in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and in violation of Article I, Section Six, of the Iowa Constitution. It is not clear whether the attack is on the statute itself as denying equal protection of the laws or whether it is an assertion that enforcement of the statute is unconstiutionally discriminatory, or both.

There is no doubt that when there is a statutory classification granting or withholding benefits under a State law based upon some religious distinctions, then the classifications in the law should be treated as being suspect and the Court must apply a standard of strict scrutiny in considering constitutionality. (See Larson vs. Valente — U.S. —, 72 L.Ed 2d 33; Butts vs. Nichols 381 F.Supp. 573 @ 578)

There is no doubt but that Section 299.24 does establish a classification and the classification determines whether or not the parents of school age children who are in a particular religious denomination must provide for education of the children in conformity with the require-

ments of Section 299.1, 257.25, and 299.3, or whether they must comply with the limitations of Section 299.24.

The classification created by the statute separates from regular educational standards those children whose parents are members of a recognized church or religious denomination established in Iowa for ten years or more before July 1, 1967, whose church or religion, "professes principles or tenets that differs substantially from the objectives, goals, and philosophy of education" in Section 257.24. The obvious purpose of the statute is to accomplish legislatively the same sort of result which was established by the United States Supreme Court judicially in Yoder vs. Wisconsin, namely, the relaxation of compulsory school laws of a state as to persons whose religious beliefs make usual educational standards inappropriate. The purpose of the classification is to recognize the constitutional principles embodied in Federal and Iowa Constitutional provisions prohibiting statutes "respecting an establishment of religion, or prohibiting the free exercise there". The purpose of the statute, then, is to comply with the Federal and State Constitutional demands.

It appears to this Court it cannot be readily held that a statute is unconstitutional as creating invidious and unconstitutional discrimination, when the statute operates to guarantee constitutionally protected rights. This Court rejects the assertion by Petitioners that the statute is unconstitutional on its face as a violation of the equal protection clauses of the Federal and Iowa Constitutions.

The Petitioners also appear to assert that Section 299.24 unconstitutionally denies equal protection of the laws because of discriminatory enforcement. Pursuant thereto Petitioners note that only members of the Amish

religious order have been granted the exemption and that others including members of Calvary Baptist Church, Charles City, Iowa, have been denied the exemption.

There is no constitutional requirement that statutes be so drawn as to encompass all classifications which might conceivably be made. The Constitution requires only that "a classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all person similarly circumstanced shall be treated alike." (See Johnson vs. Robison, 415 U.S. 361, 39 L.Ed. 2d 389; San Antonio School District vs. Rodriguez, 411 U.S. 24, 36 L.Ed. 2d 16)

This Court specifically finds that the Amish who have been granted exemption under Section 299.24 of the Iowa Code are not "similarly circumstanced" to the Petitioners herein. The differences are obvious and important and the proper basis for granting the exemption in one instance and denying it in another. This is true even when a standard of strict scrutiny is applied as in this case. (See Butts vs. Nichols, 381 F.Supp. 573, at 578; Hawkins vs. Preisser, 264 NW 2d 726, at 729; Larson vs. Valente, — U.S. —, 72 L.Ed. 2d 33)

It is apparent that the degree to which the Amish religion affects its adherents in their relationship to society in general is vastly greater than the effect of the Petitioners' religion upon their conduct in relationship to society. The Amish religion permeates Amish society to the extent that it is essentially a primative agrarian society which shuns all knowledge and information above a very elementary level. The educational requirements for the agrarian life which they lead is minimal.

Petitioners on the other hand anticipate having their children go through grade school, high school, colleges, vocational courses, trade schools, and professional schools. They anticipate their children taking part in all of the greatly varied occupations and professions available in the unlimited variety of the United States economy, except perhaps acting as bartenders or go-go girls. The Petitioners are not pacifists and they register for the military draft, enter the armed forces, register and vote in general elections, hold public offices, go bowling, watch television, read newspapers, magazines and books, and generally mingle with whatever persons are congenial to them.

The differences between the Amish and Petitioners are numerous, sharply in contrast ,and cut deeply to the core of their respective religious beliefs. The distinctions between the Amish and Petitioners are important and are apparent and constitute sound basis for distinction in granting to one and denying to the other the exemption under Section 299.24.

This Court rejects the assertion by Petitioners that Section 299.24 has been administered or applied in a discriminatory manner so as to violate the Equal Protection Clauses of the Federal and State Constitutions. (See U.S. vs. Lee — U.S. —, 71 L.Ed 2d 127, at 134; Johnson vs. Robison 415 U.S. 361, 39 L.Ed. 2d 389; Larson vs. Valente — U.S. —, 72 L.Ed. 2d 127)

CONCLUSIONS OF LAW

I. Re: Rev. Randy Johnson, et al., Plaintiffs vs. Charles City Community Schools Board of Education, et al., Defendants, Equity No. 22891

This Court concludes in the said Equitable Cause that it has jurisdiction of the persons and subject matter involved herein.

This Court has heretofore in Division I of this Ruling set out various Conclusions of Law with respect to the applicability, validity, and constitutionality of various statutory provisions and administrative rules and regulations of the State of Iowa. The conclusions so stated in Division I hereof and particular Subsections B, C, D, E, F, G, H, I, J, and K, thereof are by this reference hereby adopted as fully and completely as though set out herein in detail.

The parties to this equitable action further filed herein on October 14, 1982, an instrument entitled Stipulated Statement of Issues and have requested this Court's answer to various questions and issues thereby presented. This Court concludes it can respond on the record herein to most of the issues raised by said Stipulation but this Court cannot give advisory opinions, and where the facts show inapplicability of the various statutes referred to in said Stipulation, no response should be given and no declaratory judgment properly entered. However, insofar as applicable, this Court concludes that there exists a real and genuine dispute between the parties with respect to interpretation, applicability, validity, and constitutionality of certain Iowa statutes and administrative regulations referred to in the Stipulation. This Court by decree should respond thereto.

Various of the Defendants herein have filed counterclaim asking for relief of various types and this Court concludes it should respond thereto in accordance with prior findings and conclusions herein.

II. Re: Fred M. Pruessner, et al., Petitioners vs. Dr. Robert Benton, Superintendent, et al., Respondents, Equity No. 23190

This Court concludes that it has jurisdiction of the person and subject matter involved in the cause entitled Fred M. Pruessner, et al., Petitioners vs. Dr. Robert Benton, Superintendent, et al., Respondents, Equity No. 23190, in the above-entitled Court.

This Court in Division II of this Ruling and particularly in Division II-B, II-C, and II-D hereof has set forth various conclusions of law with respect to said administrative appeal. The conclusions as so set forth are hereby adopted and repeated herein by this reference as fully and completely as though set out herein in detail.

ORDER, JUDGMENT, AND DECREE

I. Re: Rev. Randy Johnson, et al., Plaintiffs, vs. Charles City Community Schools Board of Education, et al., Defendants, Equity No. 22891.

Now, therefore, it is Ordered, Adjudged, and Decreed in the case entitled Rev. Randy Johnson, et al., Plaintiffs vs. Charles City Community Schools Board of Education, et al., Defendants, Equity No. 22891, as follows:

1 That the following sentence from Section 257.25 of the 1981 Code of Iowa, namely, "The State Board shall promulgate rules to require that a multicultural, nonsexist approach is used by school districts." is inapplicable to Plaintiffs herein.

2. That the following sentence from Section 257.25 of the 1981 Code of Iowa, namely, "The educational program shall be taught from a multicultural, nonsexist ap-

proach." is invalid and unconstitutional as applied to Plaintiffs and constitutes an infringement on their rights of free exercise of religion under U.S. Constitution, Amendment I and under Iowa Constitution, Article I, Section 3. Also invalid as against Plaintiffs for the same reason are Iowa Administrative Rules pursuant to the foregoing quoted sentence and specifically including I.A.C. 670-3.5(5).

3. That except as hereinbefore set forth, all of the various sections and subsections of Chapters 257, 260, 280, and 299 of the 1981 Code of Iowa and accompanying administrative regulations as referred to and specifically set forth in portions of this Ruling, all of which are by this reference made a part hereof as fully and completely as though set out herein in detail, are valid, constitutional under both U.S. and Iowa Constitutions, and are enforceable as against Plaintiffs.

4. That with respect to the Stipulated Statement of Issues filed by the parties herein October 14, 1982, this Court finds, Adjudicates, and Decrees as follows:

I. COMPULSORY EDUCATION REPORTING REQUIREMENTS.

1. Plaintiffs' children are not receiving "private instruction" so as to invoke Section 299.4 of the Iowa Code.

2. Since Plaintiffs are not providing their children with "private instruction", this Court enters no ruling with respect to any possible constitutional violations thereby.

3. Calvary Baptist Christian Academy is a "private school" under Section 299.3 of the Iowa Code.

4. Section 299.3 of the Iowa Code as applied to Plaintiffs, (a) Does not violate the Free Exercise Clauses of the U.S. and Iowa State Constitutions; (b) Does not violate the Establishment Clause of the U.S. or Iowa Constitutions; (c) Is not constitutionally overbroad under due process; (d) Does not violate Plaintiffs' right to freedom of assembly and association; (e) Does not violate Plaintiffs' right to privacy; (f) Does not violate Plaintiffs' right to be free from government surveillance and intrusion; (g) Does not violate Plaintiffs' right against self-incrimination.

II. EXCEPTIONS TO COMPULSORY ATTENDANCE REQUIREMENT

5. Children attending Calvary Baptist Christian Academy are not exempt under Section 299.2(4) as persons "while receiving religious instruction".

6. The record does not justify any conclusion as to whether a child that has completed the equivalent of an eighth grade education is exempt under Section 299.2(2) or by what standards the exemption would be determined.

III. REQUIREMENTS OF EQUIVALENT INSTRUCTION BY A CERTIFIED TEACHER

7. The term "equivalent instruction" is defined in Division I-D of this Ruling, which provisions are made a part of this Decree by this reference and the term is not unconstitutionally vague.

8. The "compelling interest" of the State has been set out in Division I-C of this Ruling and the provisions thereof are incorporated herein by this reference in re-

sponse to the query as to whether the State's interest is "equivalent instruction" or to enable children to function in society and a democracy.

9. The question of responsibility to define and determine whether "equivalent instruction" is being given is referred in Divisions I-C and I-D of this Ruling and the provisions thereof are incorporated herein by this reference in response to the question.

10. The term "equivalent instruction" is defined in Division I-D of this Ruling and does not (a) violate Plaintiffs' equal protection of law rights and does not constitute an undue delegation of power and does not violate Plaintiffs' due process rights on the grounds of vagueness.

11. The process of ascertaining whether Plaintiffs' children are receiving "equivalent instruction" is referred to in Divisions I-C and I-F of this Ruling and the extent and purposes of State intrusion of Plaintiffs' religious rights are referred to therein and are by this reference incorporated herein.

12. The process of determining the question of "equivalent instruction" and the extent of its burden on Plaintiffs' constitutionally protected rights are referred to in Divisions I-C and I-D of this Ruling and what is there set forth is incorporated herein by reference. Additionally, this Court concludes that such process (a) Does not unconstitutionally burden any of Plaintiffs' constitutional rights; (b) That the extent of the burden has been heretofore set forth and is by this reference incorporated herein; (c) That there is not a less drastic means of meeting the State interest in the subject; (d) Plaintiffs' right to freedom of assembly and association are not violated; (e)

Plaintiffs' right to privacy as a congregation is not violated.

13. That imposition of the "equivalent instruction" standard is not an unconstitutional interference with the right of Plaintiff-parents to direct the education and upbringing of their children.

14. The Iowa Statutory scheme of State Certified Teachers does not result in unconstitutional infringement on any rights of Plaintiffs.

15. The State requirement of certified teachers (a) does not unconstitutionally burden Plaintiffs' right to freedom of religion, and (b) the State has an appropriate compelling interest to the extent heretofore set forth, and (c) there is no less drastic means of meeting the interests, and (d) Plaintiffs' right of freedom of assembly and association are not violated, and (e) Plaintiffs' right to privacy as a congregation are not violated.

16. "Certified Teacher" requirement is not an unlawful interference with the right of Plaintiffs to direct the education and upbringing of their children.

IV. RELIGIOUS GROUPS EXEMPTION

17. The purposes of Section 299.24 of the Iowa Code are set out in Division II of this Ruling and what is there said is by reference incorporated herein.

18. Section 299.24(a) is not void for vagueness, and (b) the question of whether it denies equal protection to churches existing less than ten years is not presented by the record herein and is not answered hereby, and (c) whether equal protection is denied to churches or denom-

inations not recognized under the Statute is not presented by the record herein and is not responded hereto, and (d) said Statute is not a violation of the Establishment Clause of the Federal or State Constitutions, and (e) said Statute has not been unconstitutionally applied.

V. UNIFORM SCHOOL REQUIREMENTS

19. Portions of Chapter 280 of the Iowa Code are applicable to Plaintiff Church School and other relationships thereof to compulsory school laws of the State are set out in prior sections of this Ruling and the same are by this reference made a part hereof.

20. The requirements of Chapter 280 of the Iowa Code as applied to Plaintiff Church School (a) are not unconstitutionally overbroad under due process, and (b) do not violate Plaintiffs' right of religious freedom, and (c) do not violate the parents' right to direct the education and upbringing of their children.

VI. COUNTERCLAIM

21. Rev. Randy Johnson is in the position of principal of Plaintiff church school and should be ordered to provide the required information under Section 299.3 within a stated time period.

22. The children of Plaintiff parents are not receiving "private instruction" and no report is required under Section 299.4.

23. The children of Plaintiff-parents are not receiving "equivalent instruction by a certified teacher elsewhere" as required by Section 299.1 of the Code while attendings Plaintiffs' church school and the Plaintiff-parents are not in compliance with Section 299.1 of the Code.

24. Plaintiff-parent should be ordered to comply with Section 299.1 of the Iowa Code in a stated time period.

5. That with respect to the counterclaims herein, this Court specifically Finds, Declares, and Adjudicates that Plaintiff church school known as Calvary Baptist Christian Academy, Charles City, Iowa, is a nonpublic, nonapproved school under valid and enforceable statutes and valid and enforceable administrative regulations of the State of Iowa except as set out in Paragraphs 1 and 2 hereof, and that Rev. Randy Johnson is a person in the position of principal of said school and as such is subject to all Iowa Statutes and Administrative Rules and Regulations relating thereto and that the governing body in control of Calvary Baptist Church, Charles City, Iowa, is the authority in charge of a nonpublic school and as such is subject to all Iowa Statutes and Administrative Rules and Regulations relating to such school.

That this Court further specifically Finds, Declares, and Adjudicates that the children who are in attendance at said Calvary Baptist Christian Academy, Charles City, Iowa, are not receiving, and said school is not providing, "equivalent instruction by a certified teacher elsewhere" as required by Section 299.1 of the 1981 Code of Iowa while attending said Calvary Baptists Christian Academy as it is now staffed and operated, and the Plaintiff-parents of such children are specifically Found, Declared, and Adjudged to be in violation of Section 299.1 of the Iowa Code.

Accordingly, Rev. Randy Johnson is hereby specifically ordered within sixty days from and after the date hereof to provide to the respective Defendants all information heretofore sought by them respectively pursuant to Section 299.3 of the 1981 Code of Iowa.

Accordingly, the Plaintiffs who are parents of children attending Calvary Baptists Christian Academy, Charles City, Iowa, are specifically ordered within sixty days from the date hereof to comply with the provisions of Section 299.1 of the Iowa Code by causing any of the children over seven and under sixteen years of age under their control to attend public school as required by Section 299.1 of the Iowa Code or in lieu thereof to cause such child to attend upon equivalent education by a certified teacher elsewhere, all as provided by Section 299.1 of the 1981 Code of Iowa.

6. That except as hereinbefore specifically provided, Plaintiffs' petition herein is denied and dismissed and counterclaims of the various Defendants are denied and dismissed.

7. That costs of this action to be computed by the Clerk of the above Court are assessed against Plaintiffs and judgment therefore is accordingly entered.

II. Re: Fred M. Pruessner, et al., Petitioners, vs. Dr. Robert Benton, Superintendent, et al., Respondents, Equity No. 23190.

Now, therefore, it is Ordered, Adjudged, and Decreed in cause entitled Fred M. Pruessner, et al., Petitioners, vs. Dr. Robert Benton, Superintendent, et al., Respondents, Equity No. 23190, as follows:

1. That Petitioners' petition for review herein is denied and is dismissed, and the Order and Ruling of the State Board of Public Instruction dated the 8th day of September, 1982, denying to Petitioners the exemption under Section 299.24 of the 1981 Code of Iowa is affirmed.

2. That costs of this action to be computed by the Clerk of the above Court are assessed against Petitioners and judgment therefore is accordingly entered.

/s/ Ray E. Clough
Judge of the Second Judicial
District of Iowa

Supreme Court, U.S.
FILED
NOV 22 1985
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-671

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

FRED M. PRUESSNER AND DONNA PRUESSNER, REV. A. C. WEGNER, JR., MARTIN MILLER AND EMILY MILLER, DALLAS MICHELSON AND JEAN MICHELSON, ROBERT J. CROOKS AND SUE CROOKS, AND GAIL VOSBURGH,

Petitioners,

vs.

DR. ROBERT BENTON, SUPERINTENDENT OF PUBLIC INSTRUCTION AND STATE BOARD OF PUBLIC INSTRUCTION,

Respondents.

BEST AVAILABLE COPY

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

THOMAS J. MILLER
Attorney General of Iowa

*BRENT R. APPEL
Deputy Attorney General

MERLE WILNA FLEMING
Assistant Attorney General
Hoover State Office Bldg.
Des Moines, Iowa 50319
(515) 281-5164
ATTORNEYS FOR RESPONDENTS

* Counsel of Record

QUESTIONS PRESENTED

1. Whether this Court has jurisdiction to review a state supreme court decision on the ground that its construction of a state statute is "arbitrary."

2. Whether a state statute, as construed by the state supreme court, that limits an exemption to compulsory education requirements to closely-knit, isolated religious communities violates equal protection or the establishment clauses of the United States Constitution.

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Petitioners,

vs.

DR. ROBERT BENTON, SUPERINTENDENT OF PUBLIC INSTRUCTION AND STATE BOARD OF PUBLIC INSTRUCTION,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

Respondents Benton and the Iowa State Board of Public Instruction respectfully pray that this Court deny Petitioners' request that a Writ of Certiorari issue to review the decision of the Supreme Court of the State of Iowa affirming the denial of a religious

exemption from the Iowa compulsory education requirements.

CONSTITUTIONAL PROVISION AND STATUTES

U.S. Const., amendment I:

Congress shall make no law respecting an establishment of religion or protecting the free exercise thereof: . . .

U.S. Const., amendment XIV, sec. 1:

. . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Iowa Code § 299.24:

Religious groups exempted from school standards. When members or representatives of a local congregation of a recognized church or religious denomination established for ten years or more within the state of

Iowa prior to July 1, 1967, which professes principles or tenets that differ substantially from the objectives, goals, and philosophy of education embodied in standards set forth in section 257.25 and rules adopted in implementation thereof, file with the state superintendent of public instruction proof of the existence of such conflicting tenets or principles, together with a list of the names, ages, and post office addresses of all persons of compulsory school age desiring to be exempted from the compulsory education law and the educational standards law, whose parents or guardians are members of the congregation or religious denomination, the state superintendent, subject to the approval of the state board of public instruction, may exempt the members of the congregation or religious denomination from compliance with any or all requirements of the compulsory education law and the educational standards law for two school years. When the exemption has once been granted, renewal of such

exemptions for each succeeding school year may be conditioned by the state superintendent, with the approval of the board, upon proof of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, and an understanding of United States history, history of Iowa, and the principles of American government, by persons of compulsory school age exempted in the preceding year, which shall be determined on the basis of tests or other means of evaluation selected by the state superintendent with the approval of the board. The testing or evaluation, if required, shall be accomplished prior to submission of the request for renewal of the exemption. Renewal requests shall be filed with the state superintendent on or before April 15 of the school year preceding the school year which the applicants desire exemption.

STATEMENT OF THE CASE

Petitioners seek review of a decision of the Iowa Supreme Court in an administrative appeal proceeding which upheld the denial of an exemption from Iowa's compulsory education requirements. The statute at issue, Iowa Code § 299.24 (1985), was before the Iowa Supreme Court for the first time. In light of the historical background of the adoption of section 299.24, the Iowa court concluded that the exemption provided by the statute was not available to any and all church groups who seek to provide for a religiously oriented education but was aimed at a much smaller target, particularly the Amish. Johnson v. Charles City Com. Sch. Bd., 368 N.W.2d 74, 82-83 (Iowa 1985). The court found that the Plaintiffs had failed to show that their children's educational needs are significantly different from those of other children and, therefore, the denial of the statutory exception was not arbitrary or capricious. Id. The Iowa court rejected the religious clause claims, utilizing this

Court's analysis in Wisconsin v. Yoder, 406 U.S. 205 (1972). Under its narrow construction of § 299.24, the Iowa Supreme Court upheld the lower court's determination that the Petitioners here were not similarly circumstanced to the Amish who have been granted the exception, thereby rejecting the Equal Protection Claim. Id. at 84-85.

REASONS FOR REJECTING THE PETITION FOR WRIT

I. THIS COURT IS WITHOUT JURISDICTION TO REVIEW A STATE SUPREME COURT DECISION ON THE GROUND THAT ITS CONSTRUCTION OF A STATE STATUTE IS "ARBITRARY."

It is axiomatic that the views of the state's highest court with respect to the construction of a state statute are binding on this Court. Wainwright v. Goode, 464 U.S. 78, 84 (1983). That principle has been followed in dozens of decisions of this Court. See e.g., Brown v. Ohio, 432 U.S. 161, 167 (1977); Garner v. Louisiana, 368 U.S. 157, 169 (1961); Des Moines Bank v. Fairweather, 263 U.S. 103, 105 (1923).

The Iowa Supreme Court took into account the historical background of section 299.24, noting that the Plaintiffs themselves referred to the statute as the "Amish exception." The Iowa court determined that Iowa's statute is aimed at groups such as the Amish who are "isolated from the mainstream of American life." Johnson, et al. v. Charles City Com. Sch. Dist., 368 N.W.2d 74, 84 (Iowa 1985). The educational needs of Amish children are quite circumscribed because of the simple rural life of the Amish. In contrast, the Plaintiffs' children will live, compete for jobs, work and move about in the diverse, complex, modern society. The weight to be given to the legislative history of a state statute is a matter of state law to be determined by the state's highest court. Exxon Corp. v. Eagerton, 462 U.S. 176, 181, n.3, (1983).

Under this Court's well-established principles, the petition for writ on the

ground that the construction of the statute is "arbitrary" has no prospect of success.

II. THIS COURT SHOULD NOT USE ITS SCARCE RESOURCES TO REVIEW A DECISION WHICH APPLIES ESTABLISHED PRECEDENT IN A CONVENTIONAL FASHION.

It would surely be a waste of scarce judicial resources to grant a writ to review a decision which so carefully applied this Court's analysis in Wisconsin v. Yoder. 406 U.S. 205 (1972). In granting the Amish petitioners an exemption from two years of high school, Chief Justice Burger observed that it was done "[i]n light of this convincing showing, one that probably few other religious groups or sects could make." Yoder, 406 U.S. at 235-236. Furthermore, this Court cited Iowa Code § 299.24 and statutes of other states with approval as examples of efforts to accommodate the Amish. Yoder, at 209. n.3.

The Iowa Supreme Court determined that nothing in Iowa law prevented the petitioners from teaching the compulsory subjects in

their own way with books and teachers of their own choice. Johnson, 368 N.W.2d at 83. In addition, the Iowa court determined that these Petitioners were not similarly circumstanced to the Amish and others for whom section 299.24 was intended to apply. Id. at 85. Narrow construction by this Court of exceptions to statutes of general application in religious and equal protection challenges demonstrate that grant of a writ in this case is not appropriate. See e.g., United States v. Lee, 455 U.S. 252 (1982) (Accommodation for self-employed Amish and others did not require exemption from social security payments by Amishman who was an employer). Gillette v. United States, 401 U.S. 437 (1971) (conscientious objector status for those who object to war in any form did not require such status for those who object to particular wars).

III. THE WRIT SHOULD NOT BE GRANTED BECAUSE REVIEW OF THE APPLICATION OF A UNIQUE STATUTE WILL NOT ELIMINATE ALLEGED CONFUSION AS TO THE MEANING OF THE TERM "COMPELLING INTEREST" IN CONNECTION WITH EDUCATION.

The petitioners argue that national "confusion" exists as to the nature of a state's compelling interest in the education of its citizens. But since Pierce v. Society of Sisters, 268 U.S. 510 (1925) was decided, the power of a state to impose compulsory education requirements has been recognized. Yoder, 406 U.S. at 213; Lemon v. Kurtzman, 403 U.S. 602, 614 (1971). None of the decisions has suggested that the fifty states must be uniform in creating and enforcing such laws. This Court has observed that the judiciary is well advised to refrain from imposing restraints on the states in connection with the structuring of their educational systems. San Antonio Ind. Sch. Dist. v. Rodriquez, 411 U.S. 1, 43 (1973). None of this Court's cases suggest that a state must design its compulsory education requirements like that of other states. Nor is there any constitutional requirement that what Iowa may view as its "compelling interests" be identical to that of Nebraska or any other state.

Review of the denial of an exemption under Iowa's unique statute will not eliminate "confusion" that exists because of the differences among educational systems in our federal system.

CONCLUSION

For all the above reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

*BRENT R. APPEL
Deputy Attorney General

MERLE WILNA FLEMING
Assistant Attorney General
Hoover State Office Bldg.
Des Moines, Iowa 50319
(515) 281-5164

*Counsel of record

PROOF OF SERVICE

I hereby certify that I caused three copies of this Brief in Opposition to Petition for Writ of Certiorari to be served on counsel for the petitioner by first class mail, postage prepaid, at the following addresses:

David C. Gibbs, Jr.
Gibbs & Craze Co., L.P.A.
6929 West 130th Street, #600
Cleveland, Ohio 44130

Craig Hastings
Clark, Clark & Hastings
315 Sixth Street
Ames, Iowa 50010

Merle Wilna Fleming

MERLE WILNA FLEMING
Assistant Attorney General
Hoover State Office Bldg.
Des Moines, Iowa 50319